Calendar No. 1109

84TH CONGRESS *1st Session* | SENATE | REPORT No. 1097

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MARKOS DEMETRIUS SPANOS

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 433]

The Committee on the Judiciary, to which was referred the bill (S. 433) for the relief of Markos Demetrius Spanos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Markos Demetrius Spanos. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 27-year-old native and citizen of Greece who entered the United States at Newport News, Va., on August 28, 1948, when he was admitted as a crewman. He was inducted into the United States Army on November 17, 1950, and after serving in Japan was honorably discharged May 23, 1952. He is presently employed in a restaurant and is a member of the American Legion, New Brunswick, N. J.

A letter, with attached memorandum, dated December 31, 1953, to the then chairman of the Senate Committee on the Judiciary from the then Commissioner of the Immigration and Naturalization with reference to S. 1094, which was a bill introduced in the 83d Congress for the relief of the same alien, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., December 31, 1953.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1094) for the relief of Markos Demetrios Spanos, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Newark, N. J., office of this Service, which has custody of those files.

The bill would grant this alien the status of a permanent resident of the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The alien is chargeable to the quota of Greece.

Sincerely,

ARGYLE R. MACKEY, *Commissioner.*

MEMORANDUM OF INFORMATION FROM THE IMMIGRATION AND NATURALIZATION SERVICE FILES RE MARKOS DEMETRIOS SPANOS, BENEFICIARY OF S. 1094

Markos Demetrios Spanos, also known as Markos James Spanos, a citizen of Greece was born March 20, 1928, in Chios, Greece. His last foreign residence was Greece. He entered the United States at Newport News, Va., on August 28, 1948, and was admitted as a crewman. At the time of this admission he intended to remain permanently. He was inducted into the United States Army on November 17, 1950, served in Japan and was honorably discharged May 23, 1952, at Fort Lawton, Wash., as an alien without legal residence in the United States. Following his discharge he was placed under deportation proceedings resulting in a decision granting him a voluntary departure.

He attended public school in Chios, Greece, for 6 years. He is presently employed as a counterman in a restaurant earning $60 per week. He has a bank balance of $700 and other assets valued at $572. He is single, his parents reside in Greece. Mr. Spanos is a member of Joyce Kilmer Post, No. 25, of the American Legion, New Brunswick, N. J.

In addition, a letter, with attached memorandum, dated June 16, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of the Immigration and Naturalization Service with reference to H. R. 883 which is a bill pending in the House of Representatives for the relief of the same alien reads as follows:

JUNE 16, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H. R. 883) for the relief of Markos Demetrios Spanoe, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Newark, N. J., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota for the first year that such quota is available.

The beneficiary is chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MARKOS DEMETRIOS SPANOS, BENEFICIARY OF H. R. 883

The beneficiary is also known as Markos James Spanos. He was born on March 20, 1928, in Chios, Greece, where he lived prior to entering the United States. He last entered the United States on August 20, 1948, at Norfolk, Va.,

at which time he was admitted as a crewman for a period of 29 days. He was inducted into the United States Army on November 17, 1950, and served until May 23, 1952, at which time he was honorably discharged at Fort Lawton, Wash., as an alien without legal residence in the United States. The beneficiary was made the subject of deportation proceedings. He was found deportable and granted the privilege of voluntary departure. He has not as yet availed himself of such privilege.

The beneficiary is single. His parents reside in Greece. There is no one in the United States dependent upon him for support. He attended school for 6 years in Greece and is presently employed as a counterman in a restaurant at a salary of $60 weekly. His assets consist of personal property valued at $850 and $200 in cash. He resides at 206 Suidan Street, New Brunswick, N. J.

Senator H. Alexander Smith, the author of the bill, has submitted the following information in connection with the case:

RESOLUTION OF EXECUTIVE COMMITTEE, MIDDLESEX COUNTY AMERICAN LEGION, NEW JERSEY

Whereas, Markos James Spanos, a Greek national, residing at 208 Suydam Street in the city of New Brunswick, N. J., is a veteran, having served in the Army of the United States from November 17, 1950, until May 23, 1952, at which time he was honorably discharged, and while in service he made and filed an application for citizenship; and

Whereas it appears that his entry into this country was as a seaman on a merchant ship from Greece, remaining here as a visitor, which visit was interrupted by his service in our armed services as aforesaid; and

Whereas the immigration authorities are of the opinion that he has overstayed his visit and that he should now be deported to Greece; and

Whereas many of the veterans' organizations in and about the city of New Brunswick, in the belief that there are extenuating circumstances which entitle this veteran to further consideration, have rallied to his support in an effort to urge the enactment of appropriate legislation under which he may obtain citizenship: Now, therefore, be it

Resolved, That the Middlesex County Executive Committee of the American Legion, representing 29 American Legion posts of Middlesex County, N. J., join with all other veterans' organizations, to take such action as shall be appropriate, in urging introduction of and the enactment of desirable legislation by the Congress of the United States, under which Markos James Spanos may obtain and be granted citizenship; and be it further

Resolved, That the Middlesex County Executive Committee through this resolution petition the immigration authorities to stay the enforcement of its order of deportation for a reasonable time until the case can receive further study and action; and be it still further

Resolved, That a copy of this resolution be sent to the immigration authorities, Gov. Alfred E. Driscoll, the American Legion Department of New Jersey, United States Senators H. Alexander Smith and Robert C. Hendrickson, United States Representatives James C. Auchincloss, P. Frelinghuysen, Jr., Peter W. Rodino, Jr., Hugh J. Addonizio, and New Jersey State Senator Bernard Vogel.

This resolution was passed at a regular meeting of the Middlesex County Executive Committee of the American Legion at Highland Park, N. J., on February 25, 1953.

ANTHONY L. FOLEY, *Commander.*
C. A. BUBALZ, *Adjutant.*

RESOLUTION

Whereas Markos James Spanos, a Greek national, residing at 208 Suydam Street in the city of New Brunswick, N. J., is a veteran, having served in the Army of the United States from November 17, 1950, until May 23, 1952, at which time he was honorably discharged, and while in service he made and filed an application for citizenship; and

Whereas it appears that his entry into this country was as a seaman on a merchant ship from Greece, remaining here as a visitor, which visit was interrupted by his service in our armed services as aforesaid; and

Whereas the Immigration authorities are of the opinion that he has overstayed his visit and that he should now be deported to Greece; and

Whereas many of the veteran organizations in and about the city of New Brunswick in the belief that there are extenuating circumstances which entitle this veteran to further consideration, have railled to his support in an effort to urge the enactment of appropriate legislation under which he may obtain citizenship: Now, therefore, be it

Resolved, That the Joyce Kilmer Post, No. 25, of the American Legion, located in the city of New Brunswick, join with all other veteran organizations in and about the city of New Brunswick, to take such action as shall be appropriate, in urging introduction of and the enactment of desirable legislation by the Congress of the United States, under which Markos James Spanos, may obtain and be granted citizenship; and be it further

Resolved, That this post petition the immigration authorities to stay the enforcement of its order of deportation in the meantime.

I hereby certify that the above is a true copy of a resolution adopted by the Joyce Kilmer Post, No. 25, of the American Legion, at a regular meeting held at post headquarters, 17 Codwise Avenue, New Brunswick, N. J., on Tuesday, February 24, 1953.

HENRY J. HERRINGTON, *Adjutant.*

Attest:

[SEAL] EARL J. CHEVALIER, Sr., *Commander.*

[From Home News, February 13, 1953]

ARMY VET FACES OUSTER FROM UNITED STATES—SHORT-ORDER CHEF IN CITY THOUGHT GI SERVICE MADE HIM CITIZEN

Markos Spanos, 24, of 208 Suydam Street, short-order cook at the Howard Johnson Restaurant at the Burnet Street traffic circle, must return to his native Greece because he entered this country illegally.

The Immigration and Naturalization Service at a hearing yesterday in Newark ordered that Mr. Spanos, who served 19 months with the United States Army of occupation in Japan, be deported.

Mr. Spanos came to these shores as a crew member of a Greek merchant ship but he didn't jump ship. He received his discharge from the vessel in good order, then was admitted through regular immigration channels to visit his brother Andrew, who lives at the Suydam Street address.

The young man overstayed his visiting period and through a series of misunderstandings never reached his ship again. Meanwhile he registered for the draft and in November 1950 was inducted into service. His induction convinced him that he was legally in the country and that he ultimately would become a citizen.

He was assigned to the 1st Cavalry Division of the army of occupation in Japan. At the end of 19 months of a 24-month stretch, Mr. Spanos received his honorable discharge—but with this notation at the bottom of the paper: "Without legal residence."

His troubles then began. He soon learned that he was illegally in the country and that he faced deportation. He has been working in restaurants in the area since May 23, 1952, when he shed his uniform for a cook's outfit.

The Jewish War Veterans learned of the young Greek's plight and volunteered to go to bat for him. Gabriel Kirzenbaum volunteered as his counsel and for 7 months toiled to keep Mr. Spanos in the United States.

Under $500 bail, Mr. Spanos will remain here until the immigration authorities serve him with orders to leave the country. He then will be forced to leave unless an appeal is taken to the Board of Immigration Appeals at Washington, D. C., or a bill is passed by Congress to allow him to remain.

Mr. Kirzenbaum said today he had appealed to United States Senator H. Alexander Smith for help. He has asked the Senator to introduce a bill to allow Mr. Spanos to remain. He said the young man has given 18 months of his life to the United States and in the approximately 5 years he has been in the city or with the Army has lived an exemplary life.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 433) should be enacted.

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Calendar No. 1110

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1098

UNIV. OF MICH.

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STEPHEN FODO

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1125]

The Committee on the Judiciary, to which was referred the bill (S. 1125) for the relief of Stephen Fodo, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Stephen Fodo. The bill provides for the payment of the required visa fee. No quota charge is provided for in the bill, inasmuch as the beneficiary is entitled to nonquota status.

STATEMENT OF FACTS

The beneficiary of the bill is a 47-year-old alien who was born in what was Austria-Hungary and was last a citizen of Rumania. He first entered the United States in May 1926 at Detroit, Mich., by stating that he resided in that city. He lived there continuously until 1945 when he made a trip to Canada and was readmitted upon the basis of his claim to United States citizenship. Upon his return from another trip to Canada on August 22, 1954, he again claimed United States citizenship, but he was subsequently excluded after a hearing by the Immigration and Naturalization Service when the falsity of his claims to citizenship was admitted. The beneficiary is married to a United States citizen and has two citizen children. He resides with his wife and family in Duquesne, Pa., where he is employed by the United States Steel Corp.

A letter, with attached memorandum, dated April 28, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., April 28, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1125) for the relief of Stephen Fodo, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Pittsburgh, Pa., office of this Service, which has custody of those files.

The bill would, in effect, waive the excluding provisions of the Immigration and Nationality Act and grant this alien the status of permanent residence, upon payment of the required visa fee.

It appears the beneficiary is eligible to apply for a nonquota status as the husband of a United States citizen.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING STEPHEN FODO, BENEFICIARY OF S. 1125

Stephen Fodo, also known as Steve Fodo, was born in Torterbec, Szatmar, Austria-Hungary, on February 23, 1908. He first entered the United States at Detroit, Mich., in May 1926, at which time he claims he was admitted by stating that he resided in Detroit, Mich. He resided continuously in the United States until July 1945, when he made a brief trip to Canada, and was readmitted at Buffalo, N. Y., by claiming United States citizenship.

On August 18, 1954, the beneficiary again went to Canada. Upon his return through the port of Buffalo, N. Y., on August 22, 1954, he was questioned by an immigration officer and presented the birth certificate of another person in an attempt to effect reentry into the United States. He was accorded a hearing to determine his admissibility to the United States before a special inquiry officer on August 23 and 27, 1954, and gave detailed false testimony with respect to his alleged citizenship. He was ordered excluded and then paroled into the United States to afford him an opportunity to produce additional evidence of his claim to citizenship. A continued hearing was held at Pittsburgh, Pa., on October 5, 1954, at which time he admitted the falsity of his prior testimony concerning his citizenship and admitted that he had perjured himself. As a result of this hearing he was ordered excluded from the United States. The excluding decision was appealed to the Board of Immigration Appeals and on January 24, 1955, the Board dismissed the appeal and upheld the decision of the special inquiry officer.

The beneficiary's wife is a United States citizen. They were married at New York, N. Y., on November 19, 1936. Two children were born of this marriage—Barbara Fodo, age 17, and Stephen Emery Fodo, age 12, both of whom were born in McKeesport, Pa. The beneficiary is presently residing with his wife and family at 130½ South First Street, Duquesne, Pa. Mr. Fodo's parents are deceased. He has no relatives in Europe. He has 1 brother and 1 cousin who are United States citizens residing in the United States.

Mr. Fodo graduated from high school in Austria-Hungary. Since residing in the United States he has completed a 12 months' course at an electrical trade school at Detroit, Mich. He is presently employed by the United States Steel Corp., Duquesne, Pa., as a motor inspector and his average earnings are $2.28 per hour. Mr. Fodo's assets consist of personal effects, household furnishings and approximately $1,000 in cash. He was formerly employed at the Ford plant, River Rouge, Mich., as a laborer and worked at odd jobs in States of Michigan and New York before moving to Pennsylvania in 1937.

Senator Edward Martin, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

UNITED STATES SENATE,
COMMITTEE ON PUBLIC WORKS,
June 21, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D. C.

(Attention Immigration Subcommittee.)

DEAR HARLEY: In connection with the private bill, S. 1125, which I have introduced in behalf of Stephen Fodo of Duquesne, Pa., I am enclosing material in his support.

This bill concerns the case of a 46-year-old alien of Austro-Hungarian derivation, who was last a citizen of Rumania. He came to the United States by way of Canada some time in 1926. He accomplished this by walking across the bridge in Detroit. Mr. Fodo established himself in the community and married an American citizen in 1936. He has two American-citizen children, a girl of 17 and a boy of 12. His immediate problem springs from a visit he made to Canada last August to visit a cousin. Returning, he was held at Buffalo for lack of proper identification. At that time he stated he was an American citizen born in Michigan. He was paroled in his wife's custody and permitted to come back to the United States to submit proof of his birth.

As amazing as it may seem, Mr. Fodo's family had no knowledge of his alien birth and believed, until this time, that he was an American citizen born in Michigan. His wife and children have been greatly distressed over the situation, since Mr. Fodo was forced to admit his false statements.

Mr. Fodo seems to have been entirely unaware that he could have adjusted his immigration status as the spouse of an American citizen. During the war he worked in a war plant and was a highly trusted and valued employee. Apparently no check was ever made. I believe he thought he was an American citizen, or at least here legally, due to his marriage. I do not believe Mr. Fodo is guilty of any crime, but only of ignorance of the facts. The situation when he lied to the immigration authorities was one caused by fear rather than any desire to evade the law.

I am enclosing 2 letters I have received from the wife, photographs of his 2 children and a report on Mr. Fodo's case as recorded in an appeal before the Board of Immigration Appeals. I believe this is a most worthwhile case, and I will be glad to submit to the committee other affidavits of Mr. Fodo's character and responsibility as a father and working member of the community.

With kindest regards, I am

Very sincerely,

EDWARD MARTIN.

DUQUESNE, PA., *February 28, 1955.*

Mrs. CATHERINE GUYON,
Washington, D. C.

DEAR MRS. GUYON: First of all we want to thank you and Hon. Senator E. Martin for what you have done in our behalf. Senator Kopriver brought me down a copy of the bill that Senator Martin introduced in my husband's behalf. It certainly has made us feel a lot easier now to know we have such good unknown friends to help us. Mr. Froh also notified us that he received a copy of the bill and a letter from you.

If we are needed in Washington for any reason we will make the trip.

I am sending you my children's school snapshots to show you that they are nice American children who need their dad here with them very much.

Again we thank you for your sincere interest in our serious problem.

I remain gratefully yours.

Mrs. STEVE FODO.

HUNGARIAN REFORMED CHURCH,
Duquesne, Pa., June 28, 1955.

IMMIGRATION AND NATURALIZATION SERVICE,
United States Department of Justice
or
To Whom It May Concern:

As pastor of the Hungarian Reformed Church of Duquesne, Pa., for over 13 years, I have known Mr. Stephen Fodo of 130 South First Street, Duquesne, Pa., for that period of time.

He is a member, in good standing, of my church. He has served on the board of trustees. Has an outstanding family; his wife is an active leader in women's work, his daughter is the organist of our church.

I have known Mr. Stephen Fodo as a law-abiding, trustworthy, and conscientious Christian; and a good family man. His standing in the community is excellent.

Very truly yours,

Reverend STEPHEN SZOKE, *Pastor.*

UNITED STEELWORKERS OF AMERICA, C. I. O.,
DUQUESNE LOCAL NO. 1256,
Duquesne, Pa., June 26, 1955.

IMMIGRATION AND NATURALIZATION SERVICE,
United States Department of Justice.

To Whom It May Concern:

This is to inform you that Mr. Stephen Fodo of 130½ South First Street, Duquesne, Pa., has been a member of our local union from 1937., in which time he has proved himself a good member, a man of excellent character and a law-abiding citizen of this great Republic of ours.

His standing and character in the community is beyond reproach.

Very truly yours.

ANTHONY NEBINSKI.
WILLIAM PETRISKO.

JUNE 30, 1955.

To Whom It May Concern:

Steve Fodo has worked at the Duquesne Works of the United States Steel Corp. since September 1939. He started at that time as a motor inspector helper and in 1942 advanced to a motor inspector, which position he holds currently.

I am not personally acquainted with Mr. Fodo, but his general foreman with whom I am very well acquainted assures me that Mr. Fodo is a steady, dependable, and conscientious workman. To our knowledge he is a man of temperate habits.

He has always conducted himself in his work in a straightforward and respectable manner.

FRANK O. PHILLIPS,
Division Superintendent, Maintenance, United States Steel Corp., Duquesne Works.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1125) should be enacted.

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Calendar No. 1111

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1099

UNIV. OF MICH.

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SOTERIOS CHRISTOPOULOS

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1226]

The Committee on the Judiciary, to which was referred the bill (S. 1226) for the relief of Soterios Christopoulos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Soterios Christopoulos. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native and citizen of Greece who last entered the United States at New York as a visitor for business on December 18, 1939. He is self-employed as a furrier in New York City. His application for suspension of deportation was approved by the Attorney General, but failed to receive congressional approval.

A letter, with attached memorandum, dated May 25, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., May 25, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1226) for the relief of Soterios Christopoulos, there is attached a memorandum

of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of these files.

The bill would grant this alien the status of a permanent resident of the United States upon payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota.

The alien is chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SOTERIOS CHRISTOPOULOS, BENEFICIARY OF S. 1226

Soterios Christopoulos, a citizen of Greece, was born May 1, 1924, at Kalohori, Kastoria, Greece. He is single. He now resides at 243 West 98th Street, New York, N. Y. He is self-employed as a furrier at 209 West 26th Street, New York, N. Y. His assets consist of $8,000 net worth in business, $1,000 in bonds, and $500 in clothing and personal effects. He attended grammar school for 6 years and high school for 2 years, from 1920 to 1928, in Kastoria, Greece. His father is a resident of Greece.

The beneficiary last entered the United States on December 18, 1939, at New York, N. Y., at which time he was admitted as a visitor for business for a period of 4 months. He applied for and received extensions of his temporary stay, the last of which expired on May 1, 1947. Deportation proceedings were instituted on June 30, 1948, on the charge that, after admission as a visitor, he had remained in the United States for a longer time than permitted. Suspension of his deportation was ordered by this Service, but Congress took no action during two successive sessions. An order was entered on July 30, 1954, at which time the special inquiry officer granted voluntary departure with the alternative of deportation if the alien fails to depart. Warrant for his deportation was issued on March 6, 1955.

Senator Theodore Francis Green, the author of the bill, has submitted the following documents in support of the bill:

LAW OFFICES OF STEPHEN S. SCOPAS,
280 Broadway, New York 7, N. Y., June 22, 1955.

Senator THEODORE FRANCIS GREEN,
Senate Office Building, Washington, D. C.

DEAR SENATOR GREEN: This is in answer to your telegram of recent date informing me that the Senate Subcommittee on Immigration is considering S. 1226 for the relief of Soterios Christopoulos.

I am enclosing herewith brief in support of said measure and would greatly appreciate your submitting same to the subcommittee.

Thanking you for your courtesy in this matter, I am,

Respectfully yours,

STEPHEN S. SCOPAS.

BRIEF

Soterios Christopoulos arrived in the United States at the port of New York, N. Y., on the SS. *Nea Hellas* on the 20th day of December 1939 as a temporary visitor and has resided in the United States and remained there continuously since the aforementioned date of his arrival.

He is engaged in the fur manufacturing business for himself and has a place of business located at 209 West 26th Street, New York, N. Y. He is a person of good moral character, never having committed any crime against the United States or any subdivision thereof or in any other part of the world. He is self-supporting and independent and has never become a public charge against the United States or any city or State or subdivision of the United States and there is no fear of his becoming so in the future. He is a bona fide fur merchant and has always been engaged in that field of activity, both here in New York, N. Y., and at Kastoria, Macedonia, Greece.

He has distinguished himself for his unselfish service and devotion to all the patriotic and charitable projects sponsored by the Order of Ahepa, of which he has been a member in good standing since 1943. During World War II he participated in Ahepa's war-bond drives, purchasing bonds in excess of $1,000 and being instrumental in selling thousands of bonds to others. He has on several

occasions, given blood to the American Red Cross and has been a contributor in the Ahepa hospital program sponsored by the Ahepa Greek War Relief Association. He has also been active in other organizations, such as the Society of Kastorians "Omonoia, Inc." of New York City, which is a benevolent organization.

He is desirous of making his home in the United States of America and will support and defend the Constitution of the United States with all his heart and soul, even with his life, if necessary. It is believed that he would make an excellent citizen for the United States because of his devotion to America's democratic ideals and because of the long period of continuous residence he has maintained in the United States as a successful businessman.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1226) should be enacted.

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Calendar No. 1112

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1100

UNIV. OF MICH.

AUG 1 1955

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MRS. ESTENI RODRIGUEZ ESTOPINAN DE WITLICKI

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1299]

The Committee on the Judiciary, to which was referred the bill (S. 1299) for the relief of Mrs. Esteni Rodriguez Estopinan de Witlicki, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has engaged in prostitution in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 22-year-old native and citizen of Cuba, who was married on September 18, 1953, in Havana to a United States citizen. She has a child born out of wedlock who is 2 years old. The beneficiary's husband attempted to adopt the child, but was unable to do so because Cuban law provides that an adoptive parent must be a resident of Cuba. The beneficiary's husband is employed as a marine engineer on merchant vessels of the United Fruit Co., and sends his wife $150 a month for her support. Without the waiver provided for in the bill, she will be unable to join her husband in the United States.

A letter, with attached memorandum, dated July 8, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

283155

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1299) for the relief of Mrs. Esteni Rodriguez Estopinan de Witlicki, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Hartford, Conn., office of this Service which has custody of those files.

The bill would provide that notwithstanding the provisions of secton 212 (a) (12) of the Immigration and Nationality Act, the alien may be admitted to the United States for permanent residence if she is found to be otherwise admissible under the act. It would further provide that this exemption shall apply only to a ground for exclusion of which the Secretary of State or the Attorney General have knowledge prior to enactment.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MRS. ESTENI RODRIGUEZ ESTOPINAN DE WITLICKI, BENEFICIARY OF S. 1299

Information concerning the beneficiary who has never been in the United States was furnished by the sponsor husband, John Stanley Witlicki, a United States citizen, who resides at Bristol, Conn.

Mrs. Esteni Rodriguez Estopinan de Witlicki, nee Estopinan, is a native and citizen of Cuba, who was born on August 21, 1932, in Maisi, Sabana de Baracoa, Cuba. She was married on September 18, 1953, in Habana, to John Stanley Witlicki. The beneficiary has a child, Carmen Luisa, who was born out of wedlock in Santiago on December 12, 1952. Mrs. de Witlicki, who resides with her mother, is unemployed and supported by her husband. She attended elementary school for 5 years and is a skilled seamstress. The beneficiary's mother, two sisters, and a brother reside in Cuba.

Mr. Witlicki, the sponsor, was born on October 24, 1925, in Bristol, Conn. His only marriage was to the beneficiary. He is employed as a marine engineer on merchant vessels of the United Fruit Co. at a salary of $150 a week. His assets consist of about $1,300 in cash, clothing and other personal effects valued at $1,400, an automobile worth $200, and he owns jointly with his mother a house valued at $10,000. He sends his wife $150 a month for her support. Mr. Witlicki completed grammar school and 1 year of high school. His mother, 3 brothers, and 2 sisters live in Connecticut. He was awarded a certificate by the War Shipping Administration for continuous maritime service from October 26, 1943, to July 15, 1946. After his marriage, he attempted to adopt the beneficiary's daughter, but was unable to do so because Cuban law provides an adoptive parent be a resident of Cuba.

A visa petition submitted by the sponsor for the beneficiary was approved on April 22, 1954; however, Mr. Witlicki states that his wife was refused an immigrant visa by the American consul at Habana. Mrs. de Witlicki is also the beneficiary of H. R. 3535, 84th Congress.

A letter dated February 25, 1955 to Senator Bush from the Director, Visa Office, United States Department of State, reads as follows:

DEPARTMENT OF STATE,
Washington, February 25, 1955.

Hon. PRESCOTT BUSH,
United States Senate.

DEAR SENATOR BUSH: I refer to your letter of February 3, 1955, transmitting the enclosed communication from Mr. John S. Witlicki, Maple Avenue, Bristol, Conn., concerning his desire to bring his wife, Mrs. Esteni Rodriguez Estopinan de Witlicki, to the United States from Cuba. Reference is also made to the interim telephonic acknowledgment of your letter on February 7, 1955.

According to information received from the American Embassy at Habana, Mrs. Witlicki, after careful and sympathetic consideration had been given to her case, was found to be ineligible to receive a visa under the provisions of section 212

(a) (12) of the Immigration and Nationality Act. Under the circumstances I am unfortunately not in a position to suggest any administrative action which may be taken looking to the alien's admission into the United States for permanent residence.

On the basis of the information contained in the files of this Office at the present time, the Department would not react unfavorably to a committee request for an expression of opinion regarding the enactment of a private bill for the relief of Mrs. Witlicki.

Sincerely yours,

ROLLAND WELCH,
Director, Visa Office.

Senator Prescott Bush, the author of the bill, submitted the following letter in connection with the case:

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
March 5, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR KILGORE: On yesterday I introduced in the Senate, S. 1299, for the relief of Mrs. Esteni Rodriguez Estopinan de Witlicki, copy of which is attached for your ready reference.

For the consideration of yourself and your committee, I hand you also letter which I received from Mr. Witlicki, in which he requests that I help him, and a letter from the Director of the Visa Office of the Department of State, which indicates that the Department would not react unfavorably to a committee request for an expression of opinion on such legislation.

I hope your committee will give early consideration to this measure, and I would appreciate being kept advised of its progress.

Thanking you, I am,

Sincerely yours,

PRESCOTT BUSH,
United States Senator.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1299) should be enacted.

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Calendar No. 1113

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1101

AUG 1 1955
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ANNA JERMAN BONITO

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1348]

The Committee on the Judiciary, to which was referred the bill (S. 1348) for the relief of Anna Jerman Bonito, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provisions of existing law relating to the commission of a crime involving moral turpitude and relating to one who has engaged in prostitution in behalf of the wife of a United States citizen member of our Armed Forces.

STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native and citizen of Italy who has never been in the United States. She was married to a United States citizen member of our Armed Forces in Trieste in 1953. They have no children. She is a housekeeper in Trieste, Italy, where she has been employed since 1945. She has been denied a visa to enter the United States because she was registered as a prostitute between 1946 and 1948. Without the waiver provided for in the bill, she will be unable to join her husband here in the United States.

A letter, with attached memorandum, dated July 8, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington D. C., July 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1348) for the relief of Anna Jerman Bonito, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Norfolk, Va., office of this Service, which has custody of those files.

The bill would waive the provisions of section 212 (a) (9) and (12) of the Immigration and Nationality Act which exclude from admission into the United States aliens who have been convicted of a crime involving moral turpitude and aliens who are or have been prostitutes. This would permit the beneficiary to be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that act. The bill also provides this exemption shall apply only to grounds for exclusion under such paragraphs known to the Secretary of State or the Attorney General prior to the date of enactment of this act.

As the spouse of a citizen of the United States, the beneficiary is eligible for nonquota status in the issuance of an immigrant visa.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANNA JERMAN BONITO, BENEFICIARY OF S. 1348

Information concerning the beneficiary was furnished by her husband, Anthony J. Bonito, sergeant, United States Army, presently stationed at A. P. Hill Military Reservation, Va.

The beneficiary was born on January 3, 1924, at Marcsego, Italy, and has never been in the United States. She attended public school in Italy for 8 years and presently resides at Trieste, Italy, where she has been employed as a housekeeper since 1945 at a weekly salary of $25. The beneficiary has 2 sisters and 3 brothers who reside in Yugoslavia. On June 28, 1953, she married Anthony J. Bonito at Trieste, Italy.

Sgt. Anthony J. Bonito was born on April 25, 1926, at Brooklyn, N.Y., and is a citizen of the United States. He was a member of the United States Army from 1944 to June of 1946, at which time he was honorably discharged. He reenlisted in the United States Army in March 1947 and states that he intends to make the Army his career. Sergeant Bonito states that he met the beneficiary while he was stationed with the United States Armed Forces in Italy and married her. They have no children. Sergeant Bonito's income is $222 per month, his base pay as a sergeant in the United States Army, and his assets amount to $8,900. His father is deceased. His mother, 3 brothers, and 2 sisters are citizens and residents of the United States.

The committee may wish to communicate with the Bureau of Security and Consular Affairs of the Department of State for additional information in this case.

Senator Herbert H. Lehman, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

AFFIDAVIT REQUESTING PRIVATE RELIEF LEGISLATION

SUBMITTED TO THE HONORABLE HERBERT H. LEHMAN, UNITED STATES SENATOR, STATE OF NEW YORN, BY SFC ANTHONY J. BONITO, ON BEHALF OF HIS WIFE, ANNA JERMAN BONITO REQUESTING SPECIAL RELIEF FOR HER TO ENTER THE UNITED STATES

The undersigned, being first duly sworn does make oath in due form of law and deposes as follows:

1. That the person on whose behalf I am submitting this affidavit, my wife, Anna J. Bonito, is presently living at Viale XX Settember No. 33, Free Territory of Trieste, and is a citizen of Italy. (See birth certificate and translation thereof attached as enclosure No. 1.) My wife's present occupation is that of a house-

keeper for the family of Gino Migliorini, at the aforementioned address. She earns, in the equivalent of American money, approximately $25 to $30 per week. In addition to earnings she is currently receiving a class Q allotment from me in the amount of $157.10 per month, and I also am sending her $40 per month out of my regular pay. My wife has no close relatives to my knowledge in this country. Both of her parents are dead. She has 3 brothers and 2 sisters all of whom are married and are living in Yugoslavian Zone (zone B) in Trieste. Attached are statements and translations thereof as enclosures No. 2, 3, and 4 from Dr. Luigi Cattapano, Public Relations Assistant, Headquarters Allied Military Government, Free Territory Trieste; Gino Migliorini, my wife's present employer; and Camillo Magnan, a very good friend of both my wife and myself. All the statements will attest to my wife's good moral character and reputation.

2. My wife has never entered the United States. Her Italian passport number is 4593179–P. On February 3, 1954, my wife submitted an application for immigrant visa and alien registration (No. I–208195) to be admitted as a nonquota immigrant into the United States. Said application was submitted to the American vice consul at Genoa, Italy. (The mentioned application is attached as enclosure No. 5).

3. The application referred to in the preceding paragraph was denied by a letter from the American consul dated February 5, 1954. (Said letter attached as enclosure No. 6; also attached as enclosure No. 7 is letter to me from the American consul general explaining the reason why my wife's application was denied.) I have been informed that my wife's application was denied because of two incidents which I shall relate in detail below:

(*a*) The first of these arises out of an alleged assault by my wife upon another woman. Although my knowledge with respect to the incident is not complete, I have been informed that some time during October or November 1953, during the time of the riots in Trieste allegedly precipitated by members of the Communist Party, my wife was visited by a woman neighbor who accused my wife of being a traitor because of her marriage to myself, an American citizen. This woman is known as being a Communist Party member and had for a long period of time been engaged in argument with both my wife and myself when I was stationed in Trieste. I do not know this woman's name. During the course of the visit this woman became extremely vituperative and my wife asked her to leave. A heated argument ensued during the course of which my wife, as a matter of self-defense, attempted to eject this woman from the house. It is my understanding that this woman, who claimed she had been assaulted by my wife, preferred charges against my wife, but later dropped them. There was no trial, my wife was not arrested, and as far as I know nothing further ensued as a result of this incident. Attached as enclosures No. 8 and 9 are extracts copies of local police records, and translations thereof which reveal that my wife's police record is negative. To like effect, is a general certificate from the Italian national authorities and a translation thereof, which is attached as enclosure No. 10.

(*b*) The other such incident is the registration of my wife as a prostitute in Trieste from 1946 to 1948. My wife has stated to me that, like so many others, she was forced to register by local police authorities who threatened her with imprisonment or extortion if she did not do so. I have known my wife since approximately March of 1947. Ever since I have known her, her morals have been above reproach. Others who have known her have also testified to her good morals and high reputation in the community. (See Enclosures No. 2, 3, and 4). Since 1939 my wife has, to my knowledge, always been able to support herself by legitimate means and has held responsible positions. Prior to her present employment, which I referred to in paragraph 1 above, she worked as a housekeeper in Trieste for the Vianelly family at Via Battisti No. 18. In 1948 my wife turned in her prostitute registration to the Italian authorities who accepted the turn-in and who to my knowledge have never since caused any trouble for my wife with respect thereto. It is my belief that the American consul in Genoa may have been influenced in his decision to deny my wife's application by an American Military CIC report listing my wife as having registered as a prostitute. It is my further belief that if this report could be examined it would reveal that my wife, although she may have been detained on 1 or 2 occasions in the long distant past by American Military Police, was later released without the preferring of charges, and did prove her to be entirely blameless. I have attempted to secure a copy of this CIC report so that I might submit it with this affidavit, however, my efforts have so far been unavailing. (See enclosure No. 11.) I am, however, going to make a new attempt to request a copy of this report through regular Army channels and if successful will transmit the same to be included as part of this affidavit.

4. My wife's present immigration status has been covered in paragraphs 2 and 3, above.

5. I desire permanent resident status for my wife so that they may join me and live with me so that we may resume the normal relations of husband and wife. I have been in the United States Army for a period of 9 years and intend to make the Army my career. I was born in the United States and am a United States citizen. (Attached as enclosure No. 12 is my birth certificate; attached as enclosure No. 13 is our marriage certificate; attached as enclosure No. 14 is an official record, together with a translation thereof, from Trieste civil authorities showing our present family status.)

6. My wife has never been convicted of an offense under State or Federal law in the United States or anywhere else to my knowledge.

7. My wife as never, to my knowledge, engaged in any activities or had any associations or belonged to any organizations which might be interpreted or alleged to be injurious to the American public interest.

8. Attached as enclosure No. 15 is a certificate from the adjutant of my organization showing my present service record. Attached as enclosure No. 16 is a letter of reference on my behalf from my commanding officer, Capt. Ferdinand A. Dostal. Attached as enclosure No. 17 is an affidavit submitted by me at the time my wife made application for admission to this country stating, among other things, that I intend to make the Army my career, that I am financially able to support and care for my wife, and that she will not become a public charge.

9. It is accordingly requested that the provisions of sections 212 (a) (9), and 212 (a) (12) of the Inmigration and Nationality Act be waived so as to permit my wife to be admitted to this country as a permanent resident and that a special act be passed making such provision. If any other information is needed I shall make every effort to obtain it in order to support this affidavit.

ANTHONY J. BONITO,
SFC, RA42177887,
COMPANY E, 2D BATTALION,
3d Army Cavalry,
Fort George G. Meade, Md.

ACKNOWLEDGMENT

STATE OF MARYLAND,
County of Anne Arundel, ss:

I, the undersigned, do hereby certify that I am a duly commissioned, qualified, and authorized notary public in and for the State of Maryland; and that the affiant in the foregoing affidavit, who is personally well known to me, appeared before me this day within the territorial limits of my authority and executed said affidavit as his free and voluntary act for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal this 30th day of June 1954.

My commission expires May 2, 1955.

[SEAL] THELMA B. MOSLEY, *Notary Public.*

COMPANY E SECOND BATTALION,
THIRD ARMORED CAVALRY REGIMENT,
Fort George G. Meade, Md., May 19, 1954.

Subject: Letter of reference for Sfc. Anthony J. Bonita.
To: United States Senate, attention Hon. Herbert H. Lehman.

Sfc Anthony J. Bonita RA42177887 has been under my command since December 28, 1953. During that time he has an excellent military record. From previous commanders I received high verbal praise of his abilities and attention to duty.

Sfc. Bonita's character is excellent and his behavior, in spite of trying personal problems, beyond reproach.

Sfc Bonita is a career soldier and a distinct asset to the Armed Forces of the United States.

FERDINAND A. DOSTAL,
Captain, Armor,
Commanding.

HEADQUARTERS, ALLIED MILITARY GOVERNMENT,
BRITISH-UNITED STATES ZONE,
FREE TERRITORY OF TRIESTE,
Press Office, Trieste, May 12, 1954.

To Whom It May Concern:

I know Mrs. Anna Bonito since 1949, and have a great appreciation of her integrity and reliability. Her character is one of the best and there is nothing I can say on her conduct.

Dott. LUIGI CATTAPAN,
Public Relations Assistant.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1348) should be enacted.

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Calendar No. 1114

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1102

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INGEBURG EDITH STALLINGS (NEE NITZKI)

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1357]

The Committee on the Judiciary, to which was referred the bill (S. 1357) for the relief of Ingeburg Edith Stallings (nee Nitzki) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to the conviction of a crime involving moral turpitude in behalf of the wife of a United States citizen member of our Armed Forces.

STATEMENT OF FACTS

The beneficiary of the bill is a 30-year-old native and citizen of Germany who is married to a United States citizen member of our Armed Forces. The couple has a 3-year-old citizen child born prior to their marriage in September 1954. The beneficiary was unable to obtain a visa because she was arrested and convicted in 1947 in Germany for failing to comply with German Government regulations on the posting of ration stamps when meat was sold. She worked in her father's butcher shop and failed to post some of the ration stamps she took in. Without the waiver provided for in the bill, she will be unable to enter the United States to make her home.

A letter, with attached memorandum, dated July 14, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 14, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1357) for the relief of Ingeburg Edith Stallings (nee Nitzki), there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Atlanta, Ga., office of this Service which has custody of those files.

The bill would authorize the beneficiary's lawful admission to the United States for permanent residence, notwithstanding the excluding provisions of section 212 (a) (9) of the Immigration and Nationality Act with respect to her conviction of a crime involving moral turpitude, providing she is found to be otherwise admissible. The bill would further provide that the exemption granted shall be limited to grounds of which the Secretary of State or the Attorney General has knowledge prior to its enactment.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE INGEBURG EDITH STALLINGS (NEE NITZKI), BENEFICIARY OF S. 1357

The beneficiary was born in Berling, Germany, on May 1, 1925, and is a citizen of that country. She resides in Germany and has never been in the United States. Information concerning her was furnished by her husband, Carlton B. Stallings, a staff sergeant serving with the 3440 Military Police Company at Fort Benning, Ga.

Sergeant Stallings stated that he met the beneficiary while he was serving with the United States Army in Germany during June of 1950. Shortly after meeting they started living together as man and wife as a result of which relationship they had one child who was born on October 14, 1951, in Berlin, Germany. During September of 1954 Sergeant Stallings legally married the beneficiary and thereby legitimated the child. Sergeant Stallings stated that his wife was arrested and convicted in Berlin, Germany, some time during the year of 1947 on one charge of fraud (hoax) against the Government, and received and served a sentence of 8 months. The fraud mentioned was stated to have involved the selling of foodstuffs to individuals without posting the necessary rationing stamps. Food was sold by the beneficiary's father, and it was the beneficiary's job to post the stamps at the end of each day. During the course of a routine Government inspection a shortage was noticed and the beneficiary so charged. The beneficiary's father allegedly confessed to Sergeant Stallings that he was, in fact, the guilty party, and his daughter was innocent of any charges against her.

The beneficiary is presently unemployed and completely dependent upon her husband for support. Prior to the birth of her child she was employed as a clerk in a grocery store in Berlin, Germany.

Sergeant Stallings is a career soldier, having been in the Armed Forces of the United States since 1938.

Senator Walter F. George, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

THOMASTON, GA., *February 21, 1955.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: In reference to your letter of February 17, as to the application of a nonquota visa for my wife.

I think that if you would contact the State Department and have them to forward to you the record of investigation of her from their Berlin office, it would give you any and all the information that you need.

She was convicted of frauding the government in 1947, in that she didn't have enough ration stamps to cover the amount of meat that had been sold in her father's store, and rather than take the blame himself as he should have done, he

placed it on her, since she did all the posting of the stamps. That was the only thing found against her in the State Department investigation of her.

With the deepest of appreciation I remain,

Sincerely yours,

CARLTON B. STALLINGS.

THOMASTON, GA., *January 29, 1955.*

Senator WALTER F. GEORGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR GEORGE: In reply to your letter of January 14, I am enclosing all the official documents that I have on hand. Unfortunately they are in German, and I wanted to get them translated to English before forwarding to you. Due to circumstances that couldn't be accomplished up to the present time, possibly you could have this done in your office.

I appreciate what you are doing for me, and any other information you may need, write me at 147 S Street, Thomaston, Ga.

Sincerely yours,

CARLTON B. STALLINGS.

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LEGISLATIVE REFERENCE SERVICE,
Washington, D. C.

[Translation (German)]

MARRIAGE CERTIFICATE

Registry of Vital Statistics, Berlin-Zehlendorf, No. 811

Carlton Bramblett Stallings, painter, born on February 29, 1920, at Meansville, Ga. (no documentary proof), residing at 147 S. Street, Thomaston, Ga, and Ingeburg Edith Nitzki, sales clerk, born on May 1, 1925, at Berlin (Registry of Vital Statistics No. 5a, now Berlin-Breuzberg, No. 210), residing at Schmarjestrasse 15, Berlin-Zehlendorf, contracted marriage on September 18, 1954, at the Registry of Vital Statistics of Berlin-Zehlendorf.

Berlin-Dahlem, September 18, 1954.

[Signature illegible]
(For the Registrar of Vital Statistics).

Translated by Elizabeth Hanunian, February 7, 1955.

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LEGISLATIVE REFERENCE SERVICE,
Washington, D. C.

[Translation (German)]

BIRTH CERTIFICATE

Registry of Vital Statistics, Berlin-Steglitz, No. 1126/1951

Ronald Stanley Stallings was born on October 14, 1951, in the Rittberg Hospital at Berlin-Lichterfelde.

Father: Carlton Bramblett Stallings, painter, residing at 147 S Street, Thomaston, Ga., United States of America.

Mother: Ingeburg Edith Stallings, nee Nitzki, residing at Schmarjestrasse 15, Berlin-Zehlendorf.

Berlin-Lichterfelde, November 20, 1954.

Zuo
(For the Register of Vital Statistics).

Translated by Elizabeth Hanunian February 7, 1955.

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LEGISLATIVE REFERENCE SERVICE,
Washington, D. C.

[Translation (German)]

Amtsgericht Lichterfelde, 6 VII. 18869

RESOLUTION

In the guardianship case re Ronald Stanley, illegitimate son of Ingeborg Edith Nitzki, sales clerk, born on October 14, 1951, in Berlin, as per Register of Births, No. 1125/1951, of the Register of Vital Statistics of Berlin-Steglitz, it was established that the ward, according to paragraph 1719 of the Civil Code, acquired the legal status of a legitimate child by virtue of the fact that his father, Carlton Bramblett Stallings, painter, residing at 147 S Street, Thomaston, Ga., United States of America, Protestant, contracted marriage with the child's mother on September 18, 1954, at the Registry of Vital Statistics of Berlin-Zehlendorf (Family Register No. 811/54).

Insertion of this fact into the margin of the birth certificate has been ordered.

Berlin-Lichterfelde, October 6, 1954.

Amtsgericht Lichterfelde, section 6.

(Signed) BRODNITZ, AMSTGERICHTSRAT, *Judge.*
Issued by: [Signature Illegible],
Clerk of the Court.

Translated by Elizabeth Hanunian, February 7, 1955.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1357) should be enacted.

Calendar No. 1115

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1103

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DOSINDA GONZALEZ MENDEZ

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1594]

The Committee on the Judiciary, to which was referred the bill (S. 1594) for the relief of Dosinda Gonzalez Mendez, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Dosinda Gonzalez Mendez. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 35-year-old native and citizen of Spain who entered the United States at New York on January 4, 1948, as an employee of a foreign government official. Subsequent to her admission, her status was changed to that of a servant of an officer or employee of an international organization. She is presently employed as a domestic. Her father and two sisters reside in Spain, but it is claimed that her father is ill and lives with a daughter and since her mother has died, there is no home for her to return to in Spain.

A letter, with attached memorandum, dated June 20, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., June 20, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1594) for the relief of Dosinda Gonzalez Mendez, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Washington, D. C., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

As a quota immigrant the beneficiary is chargeable to the quota of Spain.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE DOSINDA GONZALEZ MENDEZ, BENEFICIARY OF S. 1594

The beneficiary was born in Chantanda-Nogueira, Logo, Spain, on June 7, 1920. She was admitted to the United States at the port of New York on January 4, 1948 as an employee of a foreign government official under the provisions of section 3 (1) of the Immigration Act of May 26, 1924, as amended. Subsequent to her admission on January 4, 1948, her status was changed to that of a servant of an alien officer or employee of an international organization as described in section 3 (7) of the foregoing act. Deportation proceedings have been instituted against the beneficiary as she has failed to maintain the conditions of her nonimmigrant status. Such proceedings are pending at this time.

The beneficiary is single. She attended elementary school in Spain. She is employed as a domestic maid by Dr. Luis Machado at the Shoreham Hotel in Washington, D. C. In connection with her employment she earns $40 a week. She has savings amounting to $6,000. No one is dependent upon her for support.

The beneficiary's father and two sisters are presently residing in Spain. Her mother is deceased and she has one sister residing in Washington, D. C., who is a permanent resident alien of the United States.

Senator Harley M. Kilgore, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

MEMORANDUM

The beneficiary of the bill is a 34-year-old native and citizen of Spain, who entered the United States as a member of the household of a foreign government official on January 4, 1948. She resides in Washington, D. C., with her aunt and uncle, who have guaranteed that she will not become a public charge.

Her mother has died since she left Spain and her father, who has been ill for some time, is now living with a daughter there, leaving no home to which the beneficiary could otherwise return. In addition to her aunt and uncle, she has a sister living in this country who is married to a District of Columbia Metropolitan Police force officer.

There are attached several letters which vouch for the character and desirability of the beneficiary as a permanent resident.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: I am writing in behalf of Dosinda Gonzalez Mendez, who is my niece. She has been in this country since January 1948, and throughout that time has maintained her residence with me and my husband at 1740 Church Street, NW., Washington, D. C.

Her mother has died since she came to this country and her father, who is quite ill with rheumatism, lives with her sister in Spain, so that she now has no home to which she could return in Spain.

Since she has been in this country she has worked consistently in the households of various representatives of foreign governments. She is a willing and capable worker, and I have no doubt that she would be able to continue to support herself with no difficulty. She is particularly qualified to act as a nurse for children and is anxious to be able to pursue that type of work. Although I am confident of her ability to support herself, my husband and I are comfortably fixed financially, and I can vouch that she will not become a public charge.

My niece is a devoutly religious girl and of good moral character. She has learned the English language and studied the history and customs of the United States. I am sure that she does not follow the teachings of communism or any other foreign ideology which teaches the overthrow of the United States Government by violence or subversive means.

My husband and I have been citizens of the United States since 1930 and 1938 respectively.

Very truly yours,

ESTRELLA PENA,
Mrs. Joseph Pena.

WASHINGTON, D. C.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: I would like to speak for Miss Gonzalez who is a niece of my sister-in-law, Mrs. Joseph Pena. Since she has been in this country we have seen quite a lot of Miss Gonzalez, and she has spent much time in our home at 1710 R Street NW., Washington, D. C.

Although she is not in fact our blood niece, we have looked upon her as such and she has, we believe, considered us as though we were her real uncle and aunt. We have had every opportunity of observing her behavior and can truly say that she is a fine girl of the highest moral character and deep-seated religious convictions. She is today as proud of this country and its principles as we are; and someday, given the opportunity, I am sure that she will become a loyal and worthy American citizen.

I own and operate a merchandise store at 1636 17th Street NW., Washington, D. C., known as the Spanish Store. I believe my means are such that I can guarantee that Miss Gonzalez will not become a public charge if allowed to remain in this country, although her abilities are such that I am sure that this will never become a problem.

My wife and I have been citizens of the United States since 1928 and 1945.

Very truly yours,

MANUEL PENA.

ST. MATTHEW'S CATHEDRAL,
Washington, D. C., February 11, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR KILGORE: I am writing on behalf of Dosinda Gonzalez Mendez. She has been known to me for about 7 of the 10 years that I have been stationed at St. Matthew's Cathedral. She and her sister were regular members of this parish and Dosinda has continued her regular attendance here since the marriage of her sister to Joseph De Navasat which I officiated. She has given every evidence of being of good moral character.

Because of my contact with the family I feel that I am in a position to say that she neither believes nor accepts the principles of communism or any foreign ideology contrary to the way of life in the United States. I do believe that she would make a good citizen and be a credit to these United States of America.

Sincerely,

Rev. W. LOUIS QUINN.

GARDNER, MORRISON & ROGERS,
Washington, D. C., February 11, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: I understand that Dosinda Gonzalez Mendez is desirous of having legislation enacted which would grant to her the status of permanent residence, and I am writing to request that you give favorable consideration to such legislation.

Miss Gonzalez has from time to time assisted us in the care of an infant child on a part-time basis and I have had the opportunity to know her and observe her. She is a very religious girl and her moral character is above reproach. She speaks good English and understands and appreciates the principles, manners, and customs of our country.

Since Miss Gonzalez left Spain, her mother has died and her home there has been broken up. Her father has for some time been quite ill and has been forced to make his home with a daughter living there. Thus Miss Gonzalez would have no home of her own to which she could return in that country. Since she has been in this country she has lived with an aunt and uncle in Washington, D. C. She also has a sister living in Washington who is married to a Metropolitan Police force officer.

She is quite a capable girl and I am certain that she would always be able to take care of herself. She has no leanings whatsoever toward communism, fascism, or any similar teachings. In my opinion, she has the makings of a fine and loyal United States citizen and I believe she merits your very earnest consideration of a bill that would assure her the privilege of striving toward that goal.

Respectfully yours,

MEADE C. PATRICK.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1594) should be enacted.

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Calendar No. 1116

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1104

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ANTONIO DOMENICO NARCISO BIANCHI

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1676]

The Committee on the Judiciary, to which was referred the bill (S. 1676) for the relief of Antonio Domenico Narciso Bianchi, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Antonio Domenico Narciso Bianchi. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 79-year-old widower who is a native and citizen of Italy. He entered the United States September 23, 1953, when he was admitted as a visitor. He is living with his son in Chicago, Ill. The son is a permanent resident of the United States and he and his wife are both employed in Chicago. The beneficiary served for 6 months in the Italian Army during World War I. He is presently under medical care and the doctor advises against the undertaking of a long journey.

A letter, with attached memorandum, dated June 21, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., June 21, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1676) for the relief of Antonio Domenico Narciso Bianchi, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Chicago, Ill., office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon the payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota for Italy.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANTONIO DOMENICO NARCISO BIANCHI, BENEFICIARY OF S. 1676

Antonio Domenico Narciso Bianchi, a widower, native and citizen of Italy, was born on May 11, 1876. He has 3 children; 2 residing in Italy and the third, a son Pietro, with whom the beneficiary resides at 2413 South Oakley Avenue, Chicago, Ill. The beneficiary is not employed. He receives a veteran's pension of $10 per month from the Italian Government. He has no property and no assets. The beneficiary attended grammar school for 3 years in Italy.

The beneficiary was admitted to the United States as a visitor September 23, 1953, and was granted extensions of stay to January 25, 1955. Deportation proceedings were instituted April 27, 1955, and the beneficiary was found deportable on the ground that he failed to maintain the nonimmigrant status in which he was admitted. He was granted voluntary departure with the provision that failure to depart would result in an order of deportation. There is apparently no administrative relief available to the beneficiary at this time.

The beneficiary served for approximately 6 months in the Italian Army during World War I. He is not required to be registered under the Universal Military Training and Service Act.

The sponsor, Pietro Bianchi, son of the beneficiary, was admitted to the United States for permanent residence September 19, 1951. He and his wife are employed by Sleepers, Inc., 2434 South Western Avenue, Chicago, Ill., where they jointly earn $115 a week. The sponsor's assets consist of a savings account in the amount of $3,000.

Senator Paul H. Douglas, the author of the bill, has submitted the following letters in support of the bill:

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
June 30, 1955.

Re S. 1676, Antonio Bianchi.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR KILGORE: For the full information of your committee, please permit me to submit the attached information in support of S. 1676, for the relief of Antonio Domenico Narciso Bianchi.

The beneficiary of this bill is an Italian national, approximately 79 years of age. He entered the United States in July 1953, for the purpose of visiting his son, Pietro Bianchi, a legal resident of the United States. Since Mr. Antonio Bianchi's arrival in this country he has been in ill health and has required continued medical care, which his son is able to provide. The son, Pietro Bianchi is well able to support his aged father and desires to have him spend the remaining days of his life with him in order that he may have the necessary medical assistance and attention. The physician who is attending Mr. Bianchi states that a long trip at this time would be dangerous for him.

I hope your committee will agree with me that this elderly man should be permitted to remain here in this country with his son for his remaining days, and that a favorable report will be made on this measure in the very near future.

With kind regards,

Sincerely yours,

PAUL H. DOUGLAS.

CHICAGO 8, ILL., *March 14, 1955.*

To Whom It May Concern:

Mr. Antonio Narciso Bianchi, 79 years old, is under medical care for (1) angina pectoris, (2) gastric distress, the nature of which has to be determined.

I have advised Mr. Bianchi to go to the hospital.

Of course, at the present, a long trip would be dangerous.

SILVIO DEL CHICCA, M. D.

ST. MICHAEL CHURCH (ITALIAN),
MISSIONARY FATHERS OF ST. CHARLES,
Chicago 8, Ill., March 12, 1955.

To Whom It May Concern:

DEAR SIR: I, the undersigned, being the pastor of St. Michael's Church, wish to testify that Mr. Antonio Domenico Narciso Bianchi, age 79, lives in my parish, is well known to me, and attends my church regularly.

He is a very fine old man, law abiding, religious, respectful and a sincere admirer of the American way of life. He believes in democracy and rejects any principle or practice contrary to democracy.

He lives a very quiet life and is a good neighbor. In my opinion, he makes a very desirable resident of the United States of America. I recommend that he be allowed to stay here and live with his son, Pietro Bianchi, who takes very good care of his aged father.

Sincerely yours,

Rev. LOUIS DONANZAN, P. S. S. C.

SLEEPMAKERS, INC.,
Chicago 8, Ill., March 11, 1955.

To Whom It May Concern:

This is to certify that the following employees: Pietro Bianchi, started here September 28, 1951, averaging around $65 weekly. He is employed as a packer; Lina Bianchi started here July 2, 1952, averaging around $50 weekly. She is employed as a sewer.

They are highly regarded by this firm, thoroughly reliable and dependable.

Any consideration shown these two employees will be greatly appreciated.

Sincerely,

SLEEPMAKERS, INC.,
L. MINGORI, *Personnel.*

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Calendar No. 1117

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1105

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MARIA DEL CARMEN INTRIAGO MARTINEZ

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1682]

The Committee on the Judiciary, to which was referred the bill (S. 1682) for the relief of Maria del Carmen Intriago Martinez, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Maria del Carmen Intriago Martinez. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 51-year-old native of Spain and citizen of Cuba. She acquired Cuban citizenship through marriage on May 18, 1932, to a citizen of Cuba. Her husband died December 9, 1935. The beneficiary entered the United States at Miami, Fla., on September 8, 1941, when she was admitted as an employee of a foreign government official, destined to the Cuban Embassy, Washington, D. C. In 1942 she was employed at the Peruvian Embassy. In March 1944 she began working as a domestic and thus abandoned her diplomatic status. In May 1951 her application for suspension of deportation was approved by the Immigration and Naturalization Service, but failed to receive congressional approval.

A letter, with attached memorandum, dated May 17, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., May 17, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1682) for the relief of Maria del Carmen Intriago Martinez, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to beneficiary by the Washington, D. C., office which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate immigration quota.

As a quota immigrant, the beneficiary would be chargeable to the quota of Spain.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MARIA DEL CARMEN INTRIAGO MARTINEZ, BENEFICIARY OF S. 1682

The beneficiary, a native of Spain and a citizen of Cuba, was born on July 25, 1904. She went to Cuba in 1923 and acquired Cuban citizenship through marriage on May 18, 1932, to Celestine Gonzalez, a citizen of Cuba. Her husband died in Habana on December 9, 1935.

The beneficiary entered the United States at Miami, Fla., on September 8, 1941, when she was admitted as an employee of a foreign government official, destined to the Cuban Embassy, Washington, D. C. In 1942 she obtained employment at the Peruvian Embassy. She abandoned her diplomatic status in March 1944 when she began working as a domestic for private families. Deportation proceedings were instituted on October 6, 1950, on the grounds that she had remained in the United States after failing to maintain the exempt status under which she was admitted. In May 1951, her application for suspension of deportation was submitted to the 82d Congress for approval. However, the Congress failed to take action in the matter. She has been granted the privilege of voluntary departure in lieu of deportation but has not availed herself of this privilege.

Since May 1953, the beneficiary has been employed as a domestic in the home of Mrs. Irwin Laughlin, 1630 Crescent Place NW., Washington, D. C. She has assets consisting of cash and bonds in excess of $10,000. She has no near relatives in the United States.

Senator A. Willis Robertson, the author of the bill, has submitted the following information in connection with the case:

OFFICE OF GENERAL OF THE ARMY,
Washington, December 23, 1952.

Hon. A. WILLIS ROBERTSON,
United States Senate, Washington, D. C.

Mr. DEAR SENATOR ROBERTSON: I am writing on behalf of Maria Yutriago, who is employed as a member of my household staff.

It is my understanding that Maria applied (alien registration No. 7858279) for suspension of deportation under the provisions of Public Law 863, and that her application was approved by the Immigration Service.

I have been informed that the files of the Subcommittee on Immigration and Naturalization of the Senate Committee on the Judiciary indicate that during the last session of the 82d Congress the subcommittee declined to approve the case because the available facts did not establish sufficient equity to warrant allocating a visa number from the Spanish quota, which would have the effect of preferring Maria over other aliens who were awaiting their turn on the quota waiting list. The time allowed for approval by the Congress of the case has now expired, and therefore, the only possible remedy available is a private immigration bill, which would provide that Maria shall be deemed to be a permanent resident of the United States.

Since Maria's arrival in our household last May, she has proven to Mrs. Marshall and me every attribute which would make her a good citizen. It is

my understanding that she participates in our defense bond program, gives blood in the Red Cross blood donor program, and is making every effort to improve her education and linguistic ability. Since coming to our home, she has conducted herself extremely well, and I believe her to be of excellent moral character. I feel that it would be tragic to force this poor woman to return to Spain. She has been over here 7 years and has studied hard to prepare for citizenship.

In view of these circumstances, I would appreciate very much your consideration of introducing a private immigration bill which would provide for the grant of permanent residence in the United States to Maria. I am informed that the enclosed draft would accomplish this purpose.

Mrs. Marshall and I will be most appreciative of any consideration you can give this matter.

Faithfully yours,

(Signed) G. C. MARSHALL.

OFFICE OF GENERAL OF THE ARMY G. C. MARSHALL,
Washington, July 11, 1955.

Hon. A. WILLIS ROBERTSON,
United States Senate, Washington, D. C.

DEAR SENATOR ROBERTSON: I understand that, in the near future, the private bill which you introduced in behalf of Maria Intriago Martinez will be acted upon by the Judiciary Committee of the Senate.

I appreciate the interest which you have shown, and I am very hopeful that the bill will be approved. As I indicated in my letter to you over 2½ years ago, I feel that Maria is entitled to every consideration for permanent residency in the United States. All of her actions, to my knowledge, have been admirable.

Maria worked in our home and both Mrs. Marshall and I found her to be loyal, sincere, and conscientious. She has constantly conducted herself as every good citizen should. We look forward to and hope that the bill will be passed.

With warm personal regards,

Faithfully yours,

G. C. MARSHALL.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1682) should be enacted.

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Calendar No. 1118

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1106

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SPYRIDON SAINTOUFIS AND HIS WIFE EFROSSINI SAINTOUFIS

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1706]

The committee on the Judiciary, to which was referred the bill (S. 1706) for the relief of Spyridon Saintoufis and his wife Efrossini Saintoufis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Spyridon Saintoufis and his wife Efrossini Saintoufis. The bill provides for appropriate quota deductions and for the payment of the required visa fees.

STATEMENT OF FACTS

The beneficiaries of the bill are a 61-year-old husband and his 51-year-old wife both of whom are natives of Greece. They entered the United States from Canada on April 14, 1952, at Highgate Springs, Vt., when they were admitted as visitors. The couple left Greece in 1927 and settled in Rumania where they established a business. In 1949 their property was confiscated by the Communists and they fled to Greece in 1950. They entered Canada at Halifax, Nova Scotia, in 1951 as displaced persons and presently reside in Worcester, Mass., where they went after staying in Canada for 4 months. They are both gainfully employed in Worcester, Mass., and also have relatives residing there.

A letter, with attached memorandum, dated December 31, 1953, to the then chairman of the Committee on the Judiciary of the House of Representatives from the then Commissioner of the Immigration and Naturalization Service with reference to H. R. 3013 which was a bill

pending in the 83d Congress for the relief of the same aliens reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., December 31, 1953.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 3013) for the relief of Spyridon Saintoufis and Mrs. Efrossini Saintoufis, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Boston, Mass., office of this Service which has custody of these files.

This bill would grant the beneficiaries the status of permanent residence in the United States upon payment of the required visa fees. It also directs that two numbers be deducted from the appropriate immigration quota.

The beneficiaries are chargeable to the quota of Greece.

Sincerely,

ARGYLE R. MACKEY,
Commissioner.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SPYRIDON SAINTOUFIS AND MRS. EFROSSINI SAINTOUFIS, BENEFICIARIES OF H. R. 3013

The beneficiaries, Spyridon Saintoufis and Mrs. Efrossini Saintoufis, are both natives and citizens of Greece. The former, age 59, was born on April 23, 1894, in Crapsi, Greece, and the latter, age 49, was born on March 17, 1904, in Crapsi, Greece. They last resided in Canada and they entered the United States on April 14, 1952, at Highgate Springs, Vt., as visitors. They were married on October 14, 1923, at Epiros, Greece. They are both residing at 102 Water Street, Worcester, Mass.

Deportation proceedings were instituted on November 17, 1953, on the charge that at the time of entry the beneficiaries were immigrnats not in possession of valid immigration visas in violation of section 13 (a) of the act of May 26, 1924, and not exempted from the presentation thereof by said act or regulations made thereunder. The beneficiaries had lived for a great many years in Rumania but because of the Communist control of that country, they left and returned to Greece. They subsequently departed for Canada where they arrived on December 16, 1951, at Halifax, Nova Scotia, and were admitted as landed immigrants. After residing in Canada for 4 months, they applied for and received visitors' visas to enter the United States for the purpose of visiting relatives. They were admitted to the United States for 6 months and were subsequently given several extensions of their temporary stay, the last of which expired August 1, 1953.

The beneficiaries have no children and have no one dependent upon them for support. They are both gainfully employed at the Table Talk Pie Co., Worcester, Mass., the male beneficiary being employed there since April 27, 1952. He averages between $65 and $70 a week. The female beneficiary was employed there on November 17, 1952, for 2 weeks and from April 23, 1953, to the present time and she averages approximately $50 a week. They claim they have savings amounting to approximately $2,700 in a Worcester savings bank. Both beneficiaries received primary school educations in Greece.

Senator John F. Kennedy, the author of the bill, has submitted the following information in connection with the case:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 13, 1955.

Hon. JOHN F. KENNEDY,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR: I do appreciate your cooperation in introducing the companion bill, S. 1706, on April 18, 1955, for the relief of Spyridon Saintoufis and his wife Efrossini Saintoufis, of Worcester, Mass.

Mr. Saintoufis is now approximately 61 years of age and his wife 51; they have been residing and working in Worcester, where all of their relatives are located, since early in 1952. The background of these good people is that they both were born in Greece and were married there on October 14, 1923. As an enterprising and ambitious couple they left Greece in 1927 and went to Bucharest, Rumania, where, after a long struggle, Mr. Saintoufis became the owner of a restaurant and certain real estate. In 1944, as you know, Rumania became a satellite nation under the imperialistic subjugation of Russia. The Russian Government officials imposed increasing hardships upon these people until in 1949 his restaurant was confiscated without compensation and several months thereafter his real estate was also taken from him in the same manner, together with all other resources, leaving both himself and his wife penniless and friendless with threat of further persecution hanging over their heads.

Under these circumstances, they contrived to leave Bucharest and returned to Greece in 1950 where they became listed as refugees in the city of Piraeus.

Thereafter, under the auspices of the International Refugee Organization, Mr. and Mrs. Saintoufis were sent to Halifax, Nova Scotia, in early 1951 where they understood they could temporarily stay until they could enter the United States which was their original application and intention, because they have neither relatives nor friends in Canada.

Sometime in early 1951 they were granted visas to go to Worcester, Mass., United States, where all their relatives are, and had several visa extensions and have been in Worcester ever since.

Certain complications developed concerning their stay in the United States and on February 12, 1953, I introduced H. R. 3013 on their behalf, which thereafter was approved by the House Judiciary Committee and subsequently passed in the House on August 4, 1954. It appears that, because of the rush of and legislative burden upon the Congress in the closing days of the 83d Congress, time did not permit the full and adequate consideration of the merits of the measure by the Senate authority.

Technical complications have, therefore, again arisen concerning their status which, to promote equitable adjustment, prompted me to reintroduce H. R. 3035, and request your kind cooperation in introducing S. 1706.

Since the similar measure of the 83d Congress, H. R. 3013, was favorably reported by the House Judiciary Committee and approved in the House, I am assured that the substantial merit of the bill will again be accorded favorable action on this side in the near future.

The factual history of these unfortunate people reveals the heart-rendering destruction of their life's industry and accomplishments by Communist tyranny through their definace and refusal of Communist doctrine acceptance even at the great price of all their work and savings. It appears they were fortunate to get out of Bucharest with their personal safety. Acknowledged conditions in Greece today are such that it would be humanly impossible for them to start over again there. Their status as adjudged by the International Refugee Organization is practically akin to that of displaced persons with the everthreatening spector of communistic persecution should they attempt to regain any of their financial resources in Bucharest.

They are now entering into the last years of their lives within the sanctuary and assistance of blood relatives in a position to fully guarantee they would never be in any danger of becoming public charges here in the United States.

There is no blot upon their record abroad and since arriving in the United States they have been persons of exemplary character, conduct, and industry.

It obviously appears that this case presents an opportunity for the Congress to anticipate the enactment of Presidential recommendations and the overwhelming sentiment of the Congress relative to the expansion and improvement of the current Refugee Relief Act without the necessity of subjecting these worthy applicants to the long and tedious technical procedures whose only result would be to approve in the future what could be achieved through Christian justice and treatment now.

Realizing that you have, yourself, made extensive investigation of these cases, it is my earnest hope and prayer that our persevering efforts, in conjunction with our colleagues, will serve to afford these people the haven and home which is the

proclaimed objective of our refugee relief program for the persecuted and displaced, as well as providing another instance of Christian American action in opposition to the pernicious propaganda of the Communist persecutors.

Sincerely,

HAROLD D. DONOHUE,
Member of Congress.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1706) should be enacted.

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Calendar No. 1119

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1107

PANAGIOTIS NICOLAS LALOS AND HIS WIFE, ANTYRO PANAGIOTIS LALOS

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1732]

The Committee on the Judiciary, to which was referred the bill (S. 1732) for the relief of Panagiotis Nicolas Lalos and his wife, Antyro Panagiotis Lalos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Panagiotis Nicolas Lalos and his wife, Antyro Panagiotis Lalos. The bill provides for appropriate quota deductions and for the payment of the required visa fees.

STATEMENT OF FACTS

The beneficiaries of the bill are a 50-year-old husband and his 46-year-old wife who are natives and citizens of Greece. The husband had been injured by a bomb blast when he was a prisoner of the Germans in World War II and he was permitted to come to the United States as a visitor to obtain medical treatment. His wife was also permitted to enter the United States as a visitor when an operation was decided upon. He arrived in New York on May 23, 1947, and she arrived at New York on December 18, 1947. Since their arrival they have had two children born in the United States. The beneficiaries have nothing to return to in Greece. The Germans, followed by the Communists, looted and destroyed all their property. As a result of war injuries, the male beneficiary is practically deaf. He runs a small clothes-cleaning shop and his wife works as a seamstress. In 1951 the Immigration and Naturalization Service granted sus-

pension of deportation to them but Congress failed to take favorable action.

A letter, with attached memorandum, dated June 2, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington D. C., June 2, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1732) for the relief of Panagiotis Nicolas Lalos and his wife, Antyro Panagiotis Lalos, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Chicago, Ill., office of this Service, which has custody of those files.

The bill would grant the beneficiaries permanent residence in the United States upon the payment of the required visa fee. It would also direct that the required numbers be deducted from the appropriate immigration quota.

The beneficiaries are chargeable to the quota of Greece.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE PANAGIOTIS NICOLAS LALOS AND HIS WIFE, ANTYRO PANAGIOTIS LALOS, BENEFICIARIES OF S. 1732

Panagiotis Nicolas Lalos was born at Atishoron, Gortinia, Tripoli, Greece, on July 17, 1905. Antyro Panagiotis Lalos was born at Halkis, Erisa Island, Greece, on November 14, 1908. The beneficiaries are citizens of Greece. They were married at Halkis, Erisa Island, Greece, on July 14, 1946. They have two children, Joanna, born at Fayetteville, N. C., on February 11, 1948, and Toula, born at Joliet, Ill., on March 13, 1949. The beneficiaries and their dependent children reside at 3539 North Western Avenue, Chicago, Ill., where Mr. Lalos operates a tailor and cleaning shop. Mr. Lalos attended grade school for 6 years and high school for 2 years in Greece. Mrs. Lalos attended grade school in Greece for 3 years. The male beneficiary has been earning a net income of about $1,000 per year at his cleaning establishment. The female beneficiary is employed as a finishing sewer at Hart, Schaffner & Marx, 720 West Jackson Boulevard, Chicago, Ill., earning $60 weekly. Their total assets consist of a savings account of about $6,000. Mr. Lalos has 3 brothers and a sister residing in Greece. His closest relative in the United States is a cousin. Mrs. Lalos has 2 brothers and a sister residing in Greece and a brother residing in Mexico. She has no close relatives in the United States.

The male beneficiary arrived in the United States at New York, N. Y., on May 23, 1947, and was admitted as a visitor. The female beneficiary arrived in the United States at New York, N. Y., on December 18, 1947, and was admitted as a visitor to April 1, 1948. Mr. Lalos was granted extensions of stay to May 23, 1948. Deportation proceedings were instituted against the beneficiaries on February 5, 1951, on the ground that after admission as temporary visitors they remained longer than the period for which they were admitted. On April 23, 1951, the Immigration and Naturalization Service granted suspension of deportation, and their cases were referred to the Congress. No action was taken by the Congress on the beneficiaries' applications for suspension of deportation. On September 24, 1953, the beneficiaries were granted the privilege of departing voluntarily from the United States. There is apparently no administrative relief available at this time.

The male beneficiary served in the Greek Navy from 1925 to 1927. He is not required to be registered under the Selective Service Act.

Senator Paul H. Douglas, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
April 27, 1955.

Re S. 1732, Panagiotis Nicolas Lalos, Antyro Panagiotis Lalos.

Hon. HARLEY KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR KILGORE: In support of S. 1732, for the relief of Panagiotis Nicolas Lalos and his wife, Antyro Panagiotis Lalos, please find information for the consideration of your committee.

Mr. and Mrs. Lalos are Greek nationals and have two minor United States citizen children who would be destitute if their parents were deported. Mr. Lalos was permitted to come to the United States for medical treatment for an injury he suffered during the invasion by the Germans of Salonika, Greece, and Mrs. Lalos was permitted to join him when it was determined he should undergo surgery.

This couple applied for suspension of deportation and although their case was referred to Congress with the recommendation by the Attorney General that suspension be granted, no action was taken by Congress, and subsequently an order of deportation was entered.

Mr. and Mrs. Lalos are self-supporting and are able to adequately provide for their children here in the United States. What property Mr. Lalos formerly owned in Greece was totally destroyed by the Gestapo and subsequently the Communist guerillas, so that he and his family would suffer great hardship should he and Mrs. Lalos be compelled to leave this country.

I sincerely hope your committee will find it possible to favorably report S. 1732 to permit Mr. and Mrs. Lalos to remain in the United States with their minor children.

With kind regards,
Sincerely yours,

PAUL H. DOUGLAS.

[OFFICIAL TRANSLATION]

No. 2280

RESPONSIBLE DECLARATION

We the undersigned:

(1) Regular Lieutenant Colonel of Infantry Angelos Coletsos domicile 33, Makrygianni Street, Athens, and

(2) A Class Police Inspector Constantine Papaspyrou, domicile 37, J. Drossopoulou Street, Athens, do hereby responsibly declare in cognizance of the consequence of the law on false statement, that Panagiotis Lalos of Nicholas and of Jane, 50 years old, native of Atsicholon of Gortynia, at present resident at the United States of America, former resident at Salonica, on 69, Vasileos Georgiou A' Street, operating a Cheese-Yeast Factory until the year 1943–1944, had suffered complete destruction from looting and plunder of his Works from the Gestapo and subsequently from the communist guerillas. Having been arrested by the communists on the 28th October 1944 he was condemned by them to death as reactionary but was miraculously saved after payment of a ransom.

The said party is totally deprived of movable or immovable property in Greece, due to the destruction which he suffered, but is a person worthy of confidence, he enjoys a good reputation and is of sound social feelings.

The present is issued to serve him for any legitimate use in the U. S. A.

Athens, 15th February 1955.

The Declarants:

(Signed) A. COLETSOS,
Lieutenant Colonel.

(Signed) C. PAPASPYROU,
Police Inspector A Class.

Hereby follow confirmation of signatures.

Certified that foregoing is a true and exact translation into English of attached document in Greek.

Athens, 4 Mar. 1955.

C. M. MANIACHI,
The Official Translator of the Ministry of Foreign Affairs.

IMMIGRANTS' PROTECTIVE LEAGUE,
Chicago, January 18, 1955.

In re Panagiotis Nicolas Lalos and Antyro Panagiotis Lalos.

Senator PAUL H. DOUGLAS,
Washington, D. C.

DEAR SENATOR DOUGLAS: We are appealing to you in behalf of a Greek family, Panagiotis Nicolas Lalos and his wife Antyro Panagiotis Lalos, who have been told by the Immigration and Naturalization Service that they will have to leave the United States.

They applied for suspension of deportation on the ground that they have two American-born children, aged 6½ and 5½ years, who will be destitute if they are forced to leave for Greece.

This case was commenced in Chicago sometime in 1949. Mr. Lalos came to the United States for medical treatment. Prior to his arrival in this country he had an accident when he was a prisoner of war during World War II. He was imprisoned, taken by the Germans in Solonika. There was severe bombing there and as a result of the bombing his hearing became defective. He is totally deaf in one ear and has 50-percent hearing in the other ear. His plan was to come to the United States for medical treatment because they did not have the facilities in Greece. After his arrival in New York in May 1947, the doctor suggested that he should have an operation. However, he wanted to have his wife here and the doctor thought he would not operate until the wife of Mr. Lalos arrived in this country. At that time Mrs. Lalos was pregnant, but the American consul, however, knowing her condition, issued her a visitor's visa and she arrived in the United States in December 1947 for the purpose of being with her husband at the time he was to be operated.

After Mrs. Lalos' baby was born in the United States, and their financial situation was quite desperate, Mr. Lalos sought work and she did also, in order to maintain themselves. Since then they have had another child, as stated above, who was born in this country also.

Both Mr. and Mrs. Lalos applied for suspension of deportation. Their case was referred to Congress and the bill was in Congress for a long time. They felt certain that the bill would pass because of the hardship to the children, and especially since the suspension was recommended by the hearing officer and the other immigration officers who reviewed the case. Then, on November 28, 1952, they received a mimeographed letter from the Board of Immigration Appeals stating that "During the 2d session of the 82d Congress, a number of deportation cases in which suspension of deportation was authorized pursuant to section 19 (c) (2) of the act of February 5, 1917, as amended, and referred to Congress for approval during the 1st session, did not appear on concurrent resolutions favoring such suspensions.

"Under the law (sec. 19 (c) (2)) an alien whose case is not favorably acted upon by the Congress shall be deported in the manner provided by law. Such manner contemplates the alien's departure under a grant of voluntary departure. Since many of these cases were apparently rejected because of the possibility of the alien being issued an immigration visa abroad, following his departure from the United States, the authority to grant voluntary departure will be exercised in these cases.

"As to each case described above, it is ordered that the alien be permitted to depart voluntarily from the United States under such conditions and within such period of time as the officer in charge of the district deems appropriate, but in any event the alien is to be given until February 28, 1953, within which to depart.

"It is further ordered that in the event of the alien's failure to depart in accordance with the foregoing, he be deported from the United States on the charge or charges found sustained in the manner provided by law."

We felt that since Congress had rejected a large number of cases en masse that the case had not been considered individually and therefore that our clients were not given the same consideration they might had been given if Congress had reviewed their case. We also felt that since this letter states that it is possible that in many of the cases visa numbers were available and for that reason the aliens were given voluntary departure, that Congress believed that this was one of the cases where there was either an alien spouse or a citizen spouse involved who could petition for the other alien to come back for permanent residence without waiting for a quota number, and on that theory we applied for a motion for reconsideration of the decision. However, the motion was denied and again Mr. and Mrs. Lalos are faced with the tragedy of being compelled to leave the United States.

We feel that this is one of the very deserving cases, since, if Mr. and Mrs. Lalos are deported, their two American-born children will become destitute in Greece. In the United States Mrs. Lalos has been able to work for a tailoring company and earn a reasonable salary so that she can provide for herself and her children. In addition, she is also assisting her husband. Her husband has a small dry-cleaning establishment and is able to augment their earnings with a little from his business, but not too much. If they are deported they will have nothing to go back to in Greece, and their children will be destitute. Since we feel that a great injustice would be inflicted upon their two American-born children, we respectfully ask that you kindly introduce a bill into Congress legalizing their stay in this country. Perhaps if a special bill is introduced for them Congress may then consider this case on the basis of its merits, rather than classify it with a group of other cases that they had failed to consider previously.

The writer is going to be in Washington on January 31 and will be very happy to discuss this case with you, or give you any additional data which you may desire. Will you kindly advise us?

Thank you for your kind cooperation with us in helping this family, we remain

Respectfully yours,

HELEN B. JERRY,
Attorney, Immigrants' Protective League.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1732) should be enacted.

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Calendar No. 1120

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1108

UNIV. OF MICH.

AUG 1 1955

LAW LIBRARY

CONSTANTINE SALMON

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1882]

The Committee on the judiciary, to which was referred the bill (S. 1882) for the relief of Constantine Salmon having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has entered the United States by fraud and misrepresentation in behalf of the husband of a citizen of the United States.

STATEMENT OF FACTS

The beneficiary of the bill is a 28-year-old native of Jamaica and a British subject who first entered the United States in 1946 as an agricultural worker, using a card which actually belonged to his uncle. He again entered the United States in 1951 under his own name and entered again in 1952 for the third time under contract as an agricultural worker. He violated his contract by leaving his employment and seeking employment elsewhere. He went to Connecticut where he married a United States citizen in 1953. A son was born to the couple in 1954 and later in the year he was granted the right of voluntary departure. A visa petition submitted by the beneficiary's wife was approved by the Immigration and Naturalization Service on November 17, 1954. However, the beneficiary was refused a visa when it was discovered that he had entered the United States under an assumed name. The wife is pregnant and has been forced to accept charity since her husband's absence because he is unable to find work in Jamaica. Without the waiver provided for in the bill,

he will be unable to return to the United States to provide for his family.

A letter, with attached memorandum, dated June 30, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., June 30, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1882) for the relief of Constantine Salmon, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Hartford, Conn., office of this Service which has custody of those files.

The bill would provide that notwithstanding the provisions of section 212 (a) (19) of the Immigration and Nationality Act, the beneficiary may be admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that act. It would also provide that this exemption shall apply only to a ground of exclusion of which the Secretary of State or the Attorney General had knowledge prior to the enactment of this act.

Sincerely,

——— ——— *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE CONSTANTINE SALMON, BENEFICIARY OF S. 1882

The beneficiary, Constantine Salmon, or Constance Salmon, alias Dervin James, is a native of Jamaica, British West Indies, and a British subject. He was born on August 2, 1926, at Portland, Jamaica. According to information furnished by his wife, Marion, residing in Hartford, Conn., Mr. Salmon is presently living at 17 Smith Lane, Kingston, Jamaica, and is unemployed.

The beneficiary married Marion Salmon, nee Nixon, at Hartford, Conn., on September 19, 1953. They have one child, Constantine, Jr., who was born at Hartford on July 31, 1954, and he lives with his mother at 181 Wooster Street, Hartford. The alien attended grammar and high school in Jamaica and his usual occupation is that of a bookkeeper. He has no assets. His wife and child are his only relatives in the United States. His father, mother, and only sister reside in Portland, Jamaica. Mr. Salmon lived in Hartford from September 1953 to February 1955.

According to Service files the alien first entered the United States at West Palm Beach, Fla., on April 13, 1951, and was admitted temporarily to perform agricultural labor. Upon termination of his work contract he departed on October 3, 1951. He last entered the United States at West Palm Beach, Fla., on October 30, 1952, and was admitted as a nonimmigrant visitor for business until June 30, 1953, for employment as an agricultural laborer by the Florida Sugar Producers Association. On April 19, 1953, the beneficiary left his contract employer without permission and accepted other unauthorized employment. Deportation proceedings were instituted on June 14, 1954, on the ground that after admission as a nonimmigrant visitor for business the alien failed to comply with the conditions of his status. At a hearing on September 14, 1954, the charge in the warrant of arrest was sustained and an order entered granting the alien voluntary departure and if he failed to depart, that he be deported. His voluntary departure at Miami, Fla., on February 8, 1955, has been verified.

Mr. Salmon was arrested at West Hartford, Conn., on February 19, 1954, for a motor-vehicle violation but was found not guilty. A visa petition submitted by his wife was approved by this Service on November 17, 1954. However, according to Mrs. Salmon, the beneficiary was refused a visa by the American consul at Kingston, Jamaica, on March 15, 1955, when it was discovered that he had entered the United States on September 13, 1946, under the assumed name of Elucas Ferguson. If this is correct it would appear that the alien testified falsely during the deportation proceedings at Hartford in 1954 with respect to the number of times he entered the United States.

Mrs. Marion Salmon, the sponsor, a United States citizen, was born at Hartford on January 15, 1933. She is not employed. The records of the Welfare Department of the city of Hartford reflect that she received in excess of $100 for the month of January 1955 and has received $115.90 a month since February 1, 1955, for the support of herself and their child. The sponsor is a high-school graduate. She has no close relatives in Connecticut. Her father, mother, three sisters and only brother live in Boston, Mass. She is the person primarily interested in the bill. Mr. Salmon is also the beneficiary of H. R. 6354, 84th Congress.

A letter dated April 19, 1955, to Senator Prescott Bush from the Director, Visa Office, United States Department of State, reads as follows:

APRIL 19, 1955.

Hon. PRESCOTT BUSH,
United States Senate.

DEAR SENATOR BUSH: I have received your communication of March 28, 1955 (which was acknowledged by telephone on March 31) transmitting the attached letter from Mrs. Marion Nixon Salmon, 181 Wooster Street, Hartford, Conn., concerning her desire to bring her husband, Mr. Constantine Salmon, to the United States from Jamaica for permanent residence.

It is noted that Mrs. Salmon states that her husband secured a document from his uncle issued under the latter's name for the purpose of facilitating his admission into the United States as an agricultural laborer and was subsequently admitted into this country upon the basis thereof. As you know, section 212 (a) (19) of the Immigration and Nationality Act provides, in part, that any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation by fraud or by willfully misrepresenting a material fact is ineligible to receive a visa and excludable from admission into the United States. In the circumstances, any consular officer to whom Mr. Salmon may apply would have no alternative other than to refuse a visa in his case.

The law vests no discretionary authority in the Department to authorize or in consular officers to issue immigrant visas in the cases of aliens who are subject to exclusion under the immigration laws even though there may have been extenuating circumstances in connection therewith.

Sincerely yours,

ROLLAND WELCH,
Director, Visa Office.

Enclosure: From Mrs. Salmon, March 24, 1955.

Senator Prescott Bush, the author of the bill, has submitted the following letter in support of the bill:

181 WOOSTER STREET,
Hartford, Conn., March 24, 1955.

Senator PRESCOTT BUSH,
Washington, D. C.

DEAR SIR: I am a constituent of yours, and am presently residing at 181 Wooster Street, Hartford, Conn. I was born in Hartford, on January 15, 1933, and have lived here all my life.

On September 19, 1953, at Hartford, Conn., I was married to Constantine Salmon. At the present time my husband is in Jamaica, having just been refused the issuance of a nonquota immigrant visa. When I married my husband, he was here, having arrived here as a nonimmigrant visitor for business, coming in as an agricultural laborer from Jamaica on October 30, 1952, having entered the United States at the port of West Palm Beach, Fla.

My husband was born in Portland, Jamica, B. W. I. on August 2, 1926. In 1946 my husband first came here to the United States as an agricultural worker under contract, coming in under the name of Elucas Ferguson. Elucas Ferguson is his uncle. His uncle had been issued a card, permitting him entry into the United States to work as an agricultural laborer. Mr. Ferguson, however, was physically disabled at that time, and unable to pass a physical examination. Rather than undergo a physical examination and be rejected, he freely gave his card to his nephew, my husband. My husband entered the United States under the name of Elucas Ferguson, and remained here under contract for a few months, returning to Jamica in the same year.

At the time that he used his uncle's card to gain entry into the United States, he never knew that this would disqualify him from obtaining a visa later, nor was

he aware of the fact that such a regulation was in effect if in fact there were such a regulation in effect at that time.

In 1951 my husband again entered the United States as an agricultural laborer on contract under his own name, Constantine Salmon. He returned to Jamica in the same year, his contract having expired.

On October 30, 1952, for a third time he entered the United States under the same status of nonimmigrant visitor for business for employment under contract as an agricultural laborer, using his own name for this entry. On April 19, 1953, he violated his contract by leaving his employment without permission of his employer and accepted employment elsewhere.

On September 19, 1953, we were married in Hartford, Conn. We have one child named Constantine Salmon, Jr., who was born July 31, 1954. At present I am pregnant again and expect the arrival of the second child during the month of July 1955.

Since we were married my husband has always provided for my support and the support of our child. My husband applied for voluntary departure and was granted this relief and left the United States December 27, 1954. I submitted in his behalf an application for granting to him a nonquota visa. My application was approved by the Hartford office of the Immigration and Naturalization Service. My husband made application for a nonquota immigrant visa and was approved until it was discovered that in 1946 he had entered the United States under a name other than his own, and acting under section 212 (a) (19), the consul withheld his visa and refused to issue one to him.

Since my husband departed the United States I have run out of funds which he provided for my support and I have found it necessary to seek assistance from the public welfare department of the State of Connecticut. My husband in Jamaica is at present unemployed and his prospects for employment there are very poor. If his prospects for employment were good, and his ability to provide for the support of myself and our family were good in Jamaica, I would go there to join him. Because his prospects are so poor in Jamaica, however, I have no expectation of seeking to join him there. I, however, would like to have my husband allowed to join me here and to continue to support me and our present family and our expected addition as he has done in the past.

I am, therefore, requesting and appealing to you to introduce a private bill to enable my husband to come here and join his family and provide for them. It would appear to me that my husband should merit some consideration for this course of action based on the following facts:

1. He was of a very young age at the time that he entered the United States using his uncle's entry permit card.

2. There was no law or regulation making such an act reason for excluding a person from admission into the United States at the time that my husband used his uncle's entry permit card.

I appeal to you to introduce a private bill in behalf of my husband as I am humiliated by the fact that I must receive public assistance for the support of my family.

Very truly yours,

MARION NIXON SALMON.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1882) should be enacted.

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Calendar No. 1121

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1109

UNIV. OF MICH.

AUG 1 1955

LAW LIBRARY
CESARE PICCO

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1888]

The Committee on the Judiciary, to which was referred the bill (S. 1888) for the relief of Cesare Picco, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to the conviction of a crime involving moral turpitude in behalf of the father of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 55-year-old native and citizen of Italy who is presently residing in Genoa, Italy, with his wife. A visa petition for a second preference under the Italian quota was filed on his behalf by his daughter, a United States citizen who is married to a United States citizen. She resides with her husband and two citizen children in Central Falls, R. I. The beneficiary was refused a visa, after his petition was approved, because he was convicted in Italy of fraudulent bankruptcy in 1936. His wife entered the United States in 1953 but has returned to Italy to remain with her husband until he can receive a visa.

A letter, with attached memorandum, dated July 12, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 12, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1888) for the relief of Cesare Picco. there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Providence, R. I., office of this Service which has custody of those files.

The bill would provide that notwithstanding the provisions of paragraph (9) of section 212 (a) of the Immigration and Nationality Act, the beneficiary may be admitted to the United States for permanent residence, if he is found to be otherwise admissible under the provisions of that act. It would further provide that this exemption shall apply only to grounds for exclusion under such paragraph known to the Secretary of State or the Attorney General prior to the date of enactment.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE CESARE PICCO, BENEFICIARY OF S. 1888

Information concerning the beneficiary who has never lived in the United States was obtained from his sponsor daughter, Ann Marie Frigon, nee Picco, who resides at 129 Tremont Street, Central Falls, R. I.

Cesare Picco, a native and citizen of Italy, was born on July 19, 1900, in Rome. He was married in 1923 in Italy to Ida Pavanello, a native of that country. They have two daughters, Ann Marie Frigon, age 31, mentioned above, and Fulvia Annone, age 27, who resides in Laverno, Italy, with her husband. Their children were both born in Italy. The alien resides with his wife at Piazza Raiberta 2–90, Genoa, Italy. He is employed as a master chef by an unknown employer and his income is estimated at $100 a month. The beneficiary attended 11 years of public school in Paris, France, and obtained the title of master chef after taking a course of training in the Grand Hotel at Paris, France. He has no assets and lost property amounting to about $20,000 during World War II. His daughter and two grandchildren are his only relatives in the United States. He has a brother who lives abroad but whose address is unknown and he has a sister residing in Italy. Mr. Picco has lived at his present address for the past 5 years and before that lived in Trieste from 1939 to 1948. He has always worked as a chef in hotels, restaurants, and aboard vessels.

In 1952 a visa petition executed by the sponsor daughter for the issuance of preference quota visas to her parents was approved by this Service. The beneficiary's wife was admitted to the United States for permanent residence on May 7, 1953. She returned to Italy on April 9, 1955, to be with her husband until he obtained an immigrant visa and in the event he is unable to do so, she does not intend to return to the United States.

In 1953, the beneficiary was denied an immigrant visa at a United States consulate in Italy because of a conviction of the crime of fraudulent bankruptcy committed in 1936. For this crime he was sentenced to imprisonment for 3 years, 2 of which he served and was then released under a general amnesty granted by the King of Italy. It is alleged that there is no record existing of this conviction due to war conditions and that unformation concerning the conviction was volunteered by the beneficiary to the United States consul at Genoa, Italy, when applying for an immigrant visa. The alien served in the Italian Army during World War I for 2 years. He is alleged to have been confined in a German concentration camp for assisting a United States soldier to escape but the dates of this confinement are unknown.

The sponsor daughter entered the United States as an immigrant war bride in December 1948. She became a citizen of the United States in 1952. At present she is unemployed and is dependent upon her husband who receive a weekly wage of $60. Her assets, shared jointly with her husband, include a small savings account and household effects valued at $2,000. Mrs. Frigon has 2 daughters born in this cojntry who are now 5 years and 6 years of age.

The beneficiary's daughter is the person who is primarily interested in the private bill.

Senator Theodore Francis Green, the author of the bill, has submitted the following information in connection with the case:

MEMORANDUM CONCERNING CESARE PICCO

Mr. Picco was born in Rome, Italy, on June 19, 1900.

Married his present wife, Ida Picco, on June 2, 1923, in Italy.

Out of said marriage two children were born; one of them, Anna Marie, is married to Jacques Frigon, a citizen of the United States, and is now residing at Central Falls, R. I.

Picco's calling is that of chef. He began studying his occupation in Paris in 1914 and ever since has worked for private families, for hotels, and on trans-Atlantic ocean liners. He is an authority on cooking and has written 2 books which were translated into 2 languages. Now he is specializing in frozen foods which were only recently introduced in Europe.

WORLD WAR II ACTIVITIES

Mr. Picco was arrested by the German Secret Police at Umago (Trieste) for his anti-German and anti-Fascist activities; was kept at the Coroneo jail in Trieste from December 14, 1944, to February 2, 1945, at which time he was deported to Germany and detained at the Mathausen Concentration Camp, block 22, until May 1945.

CRIMINAL RECORD

Mr. Picco went into bankruptcy in Italy in 1932, caused by an unfortunate commercial enterprise. The total amount of his liabilities did not exceed 18,000 lira (less than $30 today) and his bankruptcy was pronounced as fraudulent because he took 3 chrome dishes which were included in the inventory of the business but which actually belonged to him personally; their value was 1,800 lira (their value today being less than $3); and during the pendency of the bankruptcy he had left Italy and had gone to Paris to work, for which acts he was held in contempt. All legal documents relating to his bankruptcy were destroyed during World War II, because of the bombing of the buildings in which the records were kept.

Many decrees of pardon were issued between 1932 and the present time, wiping out or extinguishing Mr. Picco's misdemeanors. He has no other criminal record.

UNITED STATES IMMIGRATION STATUS

Mr. Picco's daughter, Anna Marie Frigon, a naturalized citizen of the United States, is desirous of filing for a preference quota visa for Mr. Picco for permanent admission for residence in the United States.

The United States consulate vested with the right to grant a preference quota visa to Mr. Picco cannot do so under the present Immigration Act, because Mr. Picco's bankruptcy act places him in the category of having committed a crime involving moral turpitude.

PARDON

Should Mr. Picco obtain a pardon from the Italian Government for his act of bankruptcy in 1932, in accordance with our Immigration Act such a pardon would not remove from his character this moral turpitude stigma.

Mr. Picco's wife, Mrs. Ida Picco, at the invitation of her daughter, Mrs. Frigon, obtained a preference quota visa and was admitted to the United States for permanent residence on May 7, 1953. Because her husband, Mr. Picco, is not allowed to enter the United States, it became necessary for Mrs. Picco to return and rejoin her husband in Italy.

The only way that Mr. Picco can qualify for a preference quota visa is by a special act by the Congress of the United States, authorizing the issuance of a preference quota visa to him.

By his attorneys:

Judge LUIGI DEPASQUALE,
Providence, R. I.
GEORGE K. DEMOPULOS,
Providence, R. I.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1888) should be enacted.

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Calendar No. 1122

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1110

UNIV. OF MICH.

AUG 1 1955

LAW LIBRARY

WILLIAM THEODORE AND EMILY SANSUR SAAD

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1972]

The Committee on the Judiciary, to which was referred the bill (S. 1972) for the relief of William Theodore and Emily Sansur Saad having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to William Theodore and Emily Sansur Saad. The bill provides for appropriate quota deductions and for the payment of the required visa fees.

STATEMENT OF FACTS

The beneficiaries of the bill are a 31-year-old husband and his 31-year-old wife who are natives of Palestine and citizens of Jordan. They last entered the United States at Boston, Mass., on September 14, 1949, when they were admitted as students, destined to the University of Nebraska. He is a chemical engineer presently employed by Wyandotte Chemical Corp., at Wyandotte, Mich. They have one 3-year-old citizen child. These Palestinian Arabs were displaced by the Israeli-Arab conflict from their homeland.

A letter, with attached memorandum, dated June 28, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington 25, D. C., June 28, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1972) for the relief of William Theodore and Emily Sansur Saad, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Detroit, Mich., office of this Service, which has custody of those files.

The bill would grant the beneficiaries permanent residence in the United States upon payment of the required visa fees. It would also direct that two numbers be deducted from the appropriate immigration quota.

The beneficiaries are chargeable to the quota for Palestine (Arab Palestine).

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE WILLIAM THEODORE AND EMILY SANSUR SAAD, BENEFICIARIES OF S. 1972

William Theodore and Emily Sansur Saad are husband and wife; Mr. Saad was born on June 8, 1924, at Jersusalem, Palestine; Emily Saad was born on April 23, 1924, at Bethlehem, Palestine, both are now citizens of Jordan. The beneficiaries have 1 child, age 3, who is a native and citizen of the United States.

The beneficiaries and their child reside at 524 Orange Street, Wyandotte, Mich. Mr. Saad is employed by the Wyandotte Chemical Corp., at Wyandotte, Mich., as a chemical engineer and receives a salary of $421 per month; Mrs. Saad is unemployed. The beneficiaries own no property and have incurred debts in the amount of $800. Mr. Saad received a bachelor of science degree in chemical Engineering from the University of Nebraska in June 1954; Mrs. Saad attended the University of Nebraska from September 1949 until June 1951.

The parents of Mr. Saad reside in Syria, and he has two brothers and a sister also residing in Syria; his brother Edward Saad, resides in Pontiac, Mich., and is a citizen of the United States. Mrs. Saad's parents reside in Jordan, and she has 2 brothers and 3 sisters who also reside in Jordan.

The beneficiaries entered the United States on September 14, 1949, at Boston, Mass., at which time they were admitted as students; Mrs. Saad's status was later adjusted to that of a visitor for pleasure. They received several extensions of the period of their temporary admissions, the last of which would have expired on May 25, 1955. On February 24, 1954, the beneficiaries submitted applications for adjustment of status under section 6 of the Refugee Relief Act of 1953, but their applications were denied when both testified that they were able to return to Jordan without fear of persecution. Warrants of arrest were issued on May 24, 1955, charging they had failed to maintain their nonimmigrant status. They were accorded a hearing on June 9, 1955, and found to be subject to deportation on the charges stated in the warrants of arrest. Voluntary departure was authorized and they were advised of their right to appeal.

Neither of the beneficiaries have ever served in the Armed Forces of the United States or any other country. Mr. Saad has not registered under the Universal Military Training and Service Act.

Private bill S. 1338, 83d Congress, which was introduced for the relief of the beneficiaries passed the Senate on August 11 (legislative day, August 5), 1954. However, the names of the beneficiaries were deleted from the bill before passage.

Senator Charles E. Potter, the author of the bill, has submitted the following letters in support of the bill:

UNITED STATES SENATE,
Washington, D. C., June 20, 1955.

Re S. 1972, William Theodore and Emily Sansur Saad

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

MY DEAR MR. CHAIRMAN: I submit herewith supporting evidence in behalf of S. 1972.

Background information on this young couple is set forth in the letters from G. W. Rosenlof, dean of admissions and interinstitutional relationships, University of Nebraska, and Mr. Floyd W. Hoover, director, registration and records, University of Nebraska.

The Saads reside at 524 Orange Street, Wyandotte, Mich., with their American-born daughter, nearly 4 years of age. Mr. Saad graduated at the University of Nebraska with a bachelor of science degree in chemical engineering and is employed at the Wyandotte Chemical Corp., Wyandotte, Mich.

Being Palestinian-Arab refugees, it would result in exceeding hardship to the family if they were forced to leave the United States since Mr. Saad, being of Catholic faith, could not expect to find employment in his profession in Jordan.

It is hoped your committee will feel favorable action on S. 1972 is warranted.

Sincerely yours,

CHARLES E. POTTER,
United States Senate.

THE UNIVERSITY OF NEBRASKA,
Lincoln 8, Nebr., May 18, 1955.

Hon. Senator CHARLES E. POTTER,
United States Senator for Michigan,
United States Senate Office Building, Washington 25, D. C.

MY DEAR SENATOR POTTER: I am deeply indebted and words cannot express adequately my appreciation to you for introducing a bill in behalf of the two Saads in Wyandotte, Mich.

I had earlier sent to our own Senator, the Honorable Carl T. Curtis, a considerable bit of documentary evidence in support of our claims that William and Emilie Saad are deserving of our kindliest treatment in their efforts to become citizens of the United States of America.

I can assure you that when they first left their homeland to come here, they had no thought in mind of leaving permanently but as you can well appreciate, when the ground under them was swept away as it were, they had no homeland to which to return, and I am deeply convinced in my own heart that America will be stronger in the eyes of the world and certainly will take a rightful position in defense of certain of their Arab friends in Palestine and the Jordan country, because of what it is doing in repatriating some of these people on foreign soil and making them citizens of whom we can honestly and truly be proud.

These young people were virtually penniless and destitute when they arrived in New York. The money they had expected was not forthcoming. It was their own money but they were denied the use of it after having come here. I personally advanced the funds necessary to bring them to the University of Nebraska where we had admitted them for advanced study. An older brother had preceded William Saad, and had acclaimed the university as a fine place for William to be and in which to secure his training as an expert and leading representative in the great field of engineering.

During their stay on the university campus they were wholly dependent upon the kindness of friends here, such as the Cooper Foundation, the Nebraska Federation of Women's Clubs, the University of Nebraska, and personal friends who saw to it they were taken care of during the several years they were studying here. Both of them were in school.

Unexpectedly a child was born to them after their arrival and Emilie was not able to carry on her own studies as she had very much wanted to do. This baby arriving at the time that it did was not something for which they had planned but nature does take its course and they were caught unprepared for it. However, Lincoln was most kind to them and saw them through. We assisted them greatly in securing an opportunity for employment. I do not believe that it could ever be said that either of them took jobs which should have been held for American citizens. They were getting a practical education and practical training, but when they found that this was completed they had no place to go. There was no

home for them. Their parents had been driven into the Trans-Jordan country. They were not successful in their farming venture. Climate and unfortunate weather conditions occasioned the loss of their crops for 2 years and they in turn were in no position to be of assistance to their children.

The record as I gave it to Mr. Curtis, is free to you and I have so written to him, who will undoubtedly turn the file over to you.

I cannot conclude without again saying thank you from the bottom of our hearts, as the friends of the Saads, for having done what you have done in their behalf. I am sure that you, as a Member of the United States Senate and your colleagues will never have occasions to regret any support they give to your bill in its consideration and what I hope will be final passage.

Very sincerely yours,

G. W. ROSENLOF,
Dean of Admissions and Inter-Institutional Relationships.

A 7–282–063 William T. Saad
A 7–282–062 Emilie S. Saad

524 ORANGE STREET, WYANDOTTE, MICH., *March 24, 1955.*

Mr. JAMES W. BUTTERFIELD,
District Director, United States Department of Justice,
150 East Woodbridge Street, Detroit 26, Mich.

DEAR MR. BUTTERFIELD: Reference is made to your letter of March 17, 1955, under the above numbers, regarding our applications for adjustment of our immigration status to that of permanent residents under the provisions of section 6 of the Refugee Relief Act of 1953, as amended.

We are of the opinion that there may have been some uncertainty in your minds as to the fact that we are refugees, and in complying with your request, we are presenting in these pages a brief in our cases with reference to the examining officer's recommendation of denial to our applications above mentioned.

For the sake of clarity and easy reference, we are presenting our brief in the form of numbered paragraphs where (E) refers to my wife Emilie S. Saad, and (W) refers to myself William T. Saad.

1. In the first place we are Palestinians, born in Palestine and lived in the new city of Jerusalem the major part of our lives until we were forced to run away and take refuge in the neighboring Arab countries as a result of the fight between the Arabs and the Jews.

2. (W) I was born in the new city of Jerusalem on June 8, 1924, and there lived without interruptions until April 1948 when the Arab-Jewish trouble began.

3. (E) I was born in Bethlehem and lived there about 10 years until my father returned from South America, and from then on we lived in the new city of Jerusalem until 1948.

4. We were both living in Upper Bakaa, Jerusalem, when we were forced to run away from our homes in April 1948, as a result of the United Nation's decision to partition our homeland, Palestine. As you may know, as a result of the injustice of this decision of giving away part of our homeland to the Jews, this took the Arabs by surprise and in desperation the Arabs objected both physically and verbally in defense of our homeland against the Jews who were already enforcing the partition with the backing of a fully equipped and pretrained armies. We thus had no other choice but to run away under fire.

5. (E) My folks and I fled to Lebanon, leaving all our belongings behind—several houses, business buildings, and an orange grove, besides our personal belongings and a great sum of money which father had in the Barkley's Bank in Jerusalem. From here on we lived in Bikfaya until September 1949 when I came with my husband to the United States.

6. (W) My folks and I fled to Bethlehem, temporarily until a settlement is reached between the Arabs and the Jews. But as you may know, no settlement has as yet been reached, in fact border incidents between the Arabs and the Jews are ever increasing, and there is danger that if no wise actions are taken by both the fighting parties and the United Nations, a second all-out war will be at hand between the Arabs and the Jews, making it even more unsafe to go anywhere near the area.

I continued working for my last employer, the Arabia Insurance Co. in its temporary office at Amman, Transjordan, until I made some final settlements and copies of some records for about 1½ months. Then I was made to leave because I was a Palestinian refugee, and my job was given to a Transjordanian.

From then on I went to Lebanon and to Syria in pursuit of work but being a Palestinian refugee I was not offered any work. We were not granted any permanent residence in any of these Arab countries, nor were we given any passports (although we were permitted to stay where we fled to first). I still had my Palestine passport which was valid until November 10, 1949, and the Arab countries still recognized this passport and granted me visas to travel to and fro in these countries.

I stayed in this nomad situation until my acceptance at the University of Nebraska in 1949, and thus the granting me of a visa to the United States by the American consul in Beirut.

7. (W) My Palestine passport, as I mentioned earlier, was recognized by the Arab countries and was still valid until November 10, 1949. But the American consul in Beirut did not accept the passport and at his request I had to get a passport from an Arab country. It was then that I took out a Transjordanian passport from the Transjordanian consul in Beirut, Lebanon.

At the time I was made to understand by the Transjordanian consul that they are issuing these passports as a special service to the Palestinian refugees to facilitate their travel from one country to another, and that the passport should actually serve as a "Laissez Passé", and I was allowed to retain my Palestine passport as an evidence of my Palestinian Nationality. I still hold this passport with me and would be very glad to show it to you anytime you wish me to do so.

8. All during the time we were refugees before we came to the United States we were receiving subsistance aid from the United Nations Relief Organization. Even up until the present time our parents are still receiving such aid because they are still refugees and are still considered as Palestinians.

9. Dwelling on the statement by the examining officer that "the applicants have not established that they are unable to return to the country of their nationality," you can now appreciate our status as actually being Palestinian refugees and that we are unable to return to the country of our birth of nationality of last residence because of persecution or fear of persecution on account of race, religion, and political opinions, namely Palestine.

In the circumstances, therefore, we trust that we have presented herein the pertinent explanations, exceptions, and arguments in favor of our cases, and in a way tried to bring forward the fact that we are actually Palestinian refugees and that we are unable to return to the country of our birth of nationality because of fear of persecution on account of race, religion, or political opinions. It is in our belief, therefore, that we are eligible to adjust our immigration status according to the provisions of section 6 of the Refugee Relief Act of 1953, as amended.

Very truly yours,

WILLIAM T. SAAD.
EMILIE S. SAAD.

A letter dated May 6, 1955 to Senator Potter from the Acting District Director of the Immigration and Naturalization Service at Detroit, Mich., reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Detroit 7, Mich., May 6, 1955.

HON. CHARLES E. POTTER,
United States Senate, Capitol F–80,
Washington 25, D. C.

MY DEAR SENATOR POTTER: Pursuant to telephonic request of Miss Campbell of your Detroit office on Thursday, May 5, 1955, the following particulars, relative to William Theodore Saad and his wife, Emily Sansur Saad, are respectfully submitted for your information.

William Theodore Saad, a citizen of the Hashimite Kingdom of Transjordan, was born in Jerusalem, Palestine, on June 8, 1924. His wife, Emily Saad nee Sansur, a citizen of the Hashimite Kingdom of Transjordan, was born in Bethlehem, Palestine, on April 23, 1924. Their last residence abroad was in Jordan. Their only entry into the United States was on September 14, 1949, at Boston, Mass., by plane at which time they both entered the United States as students to September 13, 1950, for the purpose of attending the University of Nebraska at Lincoln, Nebr. They have a daughter, Leila, born September 12, 1951, at Lincoln, Nebr., a citizen of the United States by birth.

William Theodore Saad received extensions of stay, the last of which expired on January 9, 1954. He has not applied for another extension. Emily Saad requested and received a change of status to that of a visitor for pleasure, effective November 27, 1951. She received extensions of stay, the last of which expired September 13, 1953. Her last request for an extension of stay was denied.

William Theodore Saad has attended the University of Nebraska from September 26, 1949, to June of 1954, when he obtained a bachelor of science degree in chemical engineering. Following his graduation, he and his wife, Emily, came to Detroit, Mich., and he obtained employment at the Wyandotte Chemical Corp., Wyandotte, Mich., where he is now employed in the chemical engineering processing department and earns $440 a month. On March 9, 1955, the subjects submitted an application to adjust their immigration status under section 6 of the Refugee Relief Act of 1953. During the course of examination which was held on March 9, 1955, they testified that they would be able to return to Jordan, but did not want to return to their country because there is no work there and they would not be able to find employment and make a living for the family. He further testified that he is a Christian, having become a Catholic in 1950, and that the majority of the people in Transjordan are Moslems and that Christians find it hard to find employment in that country. He further testified that he would not be persecuted because of his race, religion, or political opinions if he were to return to Transjordan at this time.

Their cases were referred to our regional office with recommendation that the subjects' applications for adjustment of immigration status under the provisions of section 6 of the Refugee Relief Act of 1953 be denied for the reason that they are able to return to the country of their nationality without fear of persecution on account of race, religion, or political opinions. An order by the acting regional commissioner was entered in their cases denying their applications, and on April 26, 1955, the subjects were duly informed that it would be necessary for them to make immediate arrangements to depart from the United States on or before May 25, 1955.

Very truly yours,

JOHN F. MULCAHEY,
Acting District Director.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1972) should be enacted.

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Calendar No. 1123

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1111

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TOUFIC N. JILDEH

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1973]

The Committee on the Judiciary, to which was referred the bill (S. 1973) for the relief of Toufic N. Jildeh, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Toufic N. Jildeh. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native of Palestine and citizen of Jordan. He entered the United States at New York on December 8, 1950, when he was admitted as a student. He has a degree in engineering from Michigan State University and is presently employed by the Michigan State Highway Department. His parents and four brothers and sisters reside in Jordan and receive relief assistance from United Nations Relief and Works Agency for Palestine Refugees. The beneficiary would not be able to pursue his profession of engineer if he is forced to return to Jordan.

A letter, with attached memorandum, dated June 27, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., June 27, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1973) for the relief of Toufic N. Jildeh, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Detroit, Mich. office of this Service, which has custody of those files.

The bill would grant the beneficiary permanent residence in the United States upon payment of the required visa fee. It would further direct that one number be deducted from the appropriate quota.

Mr. Jildeh is chargeable to the quota for Jordan.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE TOUFIC N. JILDEH, BENEFICIARY OF S. 1973

Toufic N. Jildeh, was born on September 1, 1923, in Jaffa, Palestine, and is now a citizen of Jordan. Mr. Jildeh has never been married. His parents reside in Ramallah, Jordan, and he has 4 brothers and 2 sisters, all of whom reside in Jordan. He has no close relatives in the United States.

The beneficiary resides at 2012 East Kalamazoo Street, Lansing, Mich. He is employed by the Michigan State Highway Department as a draftman and receives a salary of $132 biweekly. Mr. Jildeh received a bachelor of science degree in engineering from Michigan State College, East Lansing, Mich., in June 1954. He has approximately $200 in a savings account and has no other assets.

The beneficiary arrived in the United States on December 8, 1950, at New York, N. Y., at which time he was admitted as a student. He received several extensions of his temporary admission, the last of which expired on December 7, 1954. On September 27, 1954, Mr. Jildeh applied for adjustment of his status under section 6, of the Refugee Relief Act of 1953. This application was denied in March 1955, and he was told to depart from the United States by May 20, 1955. A warrant for the arrest of Mr. Jildeh was issued May 31, 1955, charging that after admission to the United States as a student, he had failed to maintain the status under which he was admitted. On June 7, 1955, he was accorded a hearing and found to be subject to deportation on the charge stated in the warrant of arrest. Voluntary departure was authorized, and he has been advised of his right to appeal.

The beneficiary has never served in the Armed Forces of the United States or any other country. He has not registered under the Universal Military Training and Service Act.

Senator Charles E. Potter, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

UNITED STATES SENATE,
Washington, D. C., June 20, 1955.

Re S. 1973, Toufic N. Jildeh.

Hon. HARLEY M. KILGORE,
Committee on the Judiciary,
United States Senate.

MY DEAR MR. CHAIRMAN: Transmitted herewith documentary evidence in support of the subject relief bill. While Mr. Jildeh is considered by our immigration authorities as a citizen of Jordan, he is in a true sense a Palestinian-Arab refugee by reason that with his family he was forced to flee to Jordan from the family home in Jaffa due to the Arab-Israeli hostilities.

You will note the statement attached to Mr. Jildeh's letter to me of May 24, 1955, that his family at Ramallah has been receiving assistance from the United Nations Relief and Works Agency for Palestine Refugees. Mr. Jildeh is now a Christian and consequently could not expect to follow his engineering profession in Jordan.

It is my sincere hope that your committee will feel the case of Mr. Jildeh warrants favorable action on the measure I sponsored in his behalf.

Sincerely yours,

CHARLES E. POTTER, *United States Senator.*

STATE OF MICHIGAN,
DEPARTMENT OF CONSERVATION,
Lansing, Mich., May 9, 1955.

Re Toufic N. Jildeh.

Senator CHARLES C. POTTER,
Senate, Washington, D. C.

DEAR MR. POTTER: Feeling this is a situation that demands immediate attention, I am contacting you and desire that you give this matter your complete and thorough diagnosis.

You have been contacted before regarding this matter, but after reviewing the correspondence to you and your return replies, I feel that all phases were not properly and justly put to you.

This is regarding Toufic N. Jildeh, a Palestinian-Arab refugee seeking American citizenship.

In the report submitted by the Immigration Department to you, at your request, they failed to point out that Mr. Jildeh is a refugee due to the Arab-Israeli hostilities and was forced with his parents, brother, and sisters to flee from their home in Jaffa, Palestine, to take up residence in Ramallah, Jordan. They are not citizens of Jordan, but have just a temporary residence until such time that they may return to their rightful homes. The entire family have been receiving assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East. It was necessary to obtain a Jordanian passport to be able to travel to the United States, such was the case of Mr. Jildeh.

Mr. Jildeh filed papers changing his status from a student to a Palestinian refugee seeking citizenship. He entered Michigan State College to obtain his degree in electrical engineering, which he has accomplished. According to the Refugee Relief Act of 1953 Mr. Jildeh meets those requirements, also of a Palestine refugee. The Refugee Relief Act of 1953 states as follows: "Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant, and that because of events which have occurred subsequent to his entry into the United States, he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within 1 year after the effective date of this act, apply to the Attorney General of the United States for an adjustment of his immigration status." (1) Mr. Jildeh cannot return to the country of his birth, which is Jaffa, Palestine. (2) His last residence was Ramallah, Jordan, but he does not have a permanent address there as his family are all scattered. (3) He will not be able to obtain work of a permanent nature, neither in his field of engineering or common labor, for reason that he is a Christian Arab and any work that would permit him a decent living and one whereby he could help his family would be given to a Mohammedan Arab, as there is yet a vast division between the two sects.

Now, as to the definition of a Palestine refugee: The term "Palestine refugee" as used in the act, refers to a refugee who was formerly of Palestine, who lost his home and means of livelihood as a result of Arab-Israeli hostilities, and who on August 7, 1953, was eligible to receive assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East and who has not been firmly resettled. The act also provides that the accompanying spouse and unmarried minor children of a Palestine refugee may be considered for nonquota visas under the act. Is it possible to find where Mr. Jildeh does not meet the definition of a refugee. He has in his possession cards to prove that his family are yet on relief.

Since I have taken an interest in this case I have written many places and persons and also attended many talks and lectures regarding the refugees in the Near East and I have asked innumerable questions about these people and I have received the same answers which substantiates Mr. Jildeh's case. I have of recent received a reply from the American Embassy in Amman, Jordan, regarding these people. I wish to quote one paragraph which is as follows: The act provides that 2,000 nonquota immigrant visas may be issued to Palestine refugees residing in Jordan, Syria, Egypt, Iraq, Saudi Arabia, Kuwait, Bahrein, Iran, Lebanon, Yemen, Oman, Turkey. Only a small portion of the number from Jordan have

been issued visas, financial reasons prevailing and the inability to get American citizens to go the assurance forms.

Mr. Potter, no doubt you are wondering just what has prompted my interest in this one individual. At the time Mr. Jildeh entered Michigan State College he came to our home as a roomer and up until that time the people called refugees were just names in the papers, magazine, etc., and held no particular meaning to us. But as we grew to know him and many of his habits, likes and dislikes and particularly his love for his people and constant worry of them. You cannot help but feel that people of that proud race cannot help but be good neighbors. My husband was killed in World War II and I have never felt that I would care to champion the case of a foreigner, until now. To the best of my knowledge Mr. Jildeh comes from a very fine family, he is well bred, a former schoolteacher and most capable of supporting himself. I know of two of our better colleges that have offered him positions on their teaching staff. He is working as an engineer at the present time and I would say very liked by his associates. I have heard him helping my children with their schoolwork and know that he has given them a much better impress of their American history and what it means to live in a free nation than any of their teachers have done.

Friends overseas and others returning back after completing their schooling here have written and pleaded with him not to return as it is impossible to find work and as for the most their education is lost. We are constantly reminded of the threat of communism and what it can do to the situation in the Near East but when we have the opportunity to observe people and can see for ourselves what they are and then we send them back to nothing we can only expect nothing in return.

Now, Mr. Jildeh's papers were rejected because he can return to Ramallah without being shot on sight so to say with little regard as to what will happen to him after that. He is supposed to leave by the 20th of May unless someone has interest in what happens to these people. I suggested that he write you, Mr. Potter, some months ago and ask to have his name placed on a bill in Congress for examining for citizenship and his answer was no. Citizenship is something to be proud of although I will be ashamed if it is turned down. If nothing is done to prevent this I am afraid I for the first time in my life will be ashamed of our American laws. We talk a great deal about freedom and we do very little. I read your reply to a Mr. Polities of Detroit, who has been attempting to help him. Your reply was—Mr. Jildeh should return to his own country and then apply to come over through other channels. Mr. Potter, I have checked to see just how long it takes to come over to the United States. Names that are at the top of the quota take many years before they can pass the requirements and obtain enough financially to come. In that time their education and years of study are for nothing and most give it up through discouragement. I wonder if you now feel the same and can say he should return.

I realize that we must have rigid immigration laws and I realize that we cannot help all of these people; but by helping a few perhaps we could ease our conscience for the help that was not there when it was needed and today there might not be the miles of refugee camps in the Near East without any futures.

This has been long but I truly hope you have not missed anything and as soon as you can consider this justly I would appreciate hearing from you.

Thank you very much.

MRS. ROSEMARY GRACE.

MICHIGAN STATE COLLEGE,
East Lansing, Mich., May 23, 1955.

Senator CHARLES E. POTTER,
Senate Office Building, Washington, D. C.

DEAR SIR: I am glad to learn of your assistance to Mr. Toufic N. Jildeh of 2012 E. Kalamazoo Street, Lansing, Mich., for whom bill S. 1973 was introduced on May 13, 1955, for the purpose of granting Mr. Jildeh permanent residence and eventual United States citizenship.

I have known Mr. Jildeh for the past 4 years; I was the foreign student adviser at Michigan State during his first year in residence here, and became well acquainted with him and with his problems. Mr. Jildeh is a steady, self-reliant, capable man who has made a good record here, and I have every confidence that he will, if permitted, make a fine type of citizen.

I am, in general, wary of encouraging foreign students to stay with us instead of returning to their own people. In Mr. Jildeh's case, I consider that there is strong justification for his desire to stay, because of the meager opportunities available to him as a refugee from the area now occupied by Israel.

Knowing Mr. Jildeh, I am confident that your efforts in his behalf are thoroughly justified, and I sincerely hope that favorable action may be taken on the bill now pending in his behalf.

Very truly yours,

A. T. CORDRAY,
Coordinator, Basic College Improvement Services.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1973) should be enacted.

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Calendar No. 1124

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1112

UNIV. OF MICH.

AUG 1, 1955

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MYRA LOUISE DEW

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1983]

The Committee on the Judiciary, to which was referred the bill (S. 1983) for the relief of Myra Louise Dew, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Myra Louise Dew. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 23-year-old native and citizen of Australia who entered the United States September 3, 1953 at Honolulu, T. H., when she was admitted as a visitor. She is a trained nurse, presently employed at the Grady Memorial Hospital, Atlanta, Ga. The hospital is in need of her services and the director of nursing and the superintendent of the hospital have attested to her ability. In October 1954 officials of the Immigration and Naturalization Service informed her that she would be permitted to work as a nurse if she secured a quota number which appeared to be available at that time for first preference cases. Accordingly, she applied for a change of status, but when her papers were processed there were no quota numbers available for even first preference. By filing she had lost her visitor's status.

A letter, with attached memorandum, dated June 28, 1955 to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., June 28, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1983) for the relief of Myra Louise Dew, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Atlanta, Ga. office of this Service which has custody of those files.

The bill would grant the beneficiary lawful permanent residence in the United States as of the date of enactment thereof, upon payment of the required visa fee. The bill would further provide that one number be deducted from the appropriate quota.

The beneficiary is chargeable to the quota for Australia.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MYRA LOUISE DEW, BENEFICIARY OF S. 1983

The beneficiary was born on July 31, 1932, in Hamilton, Victoria, Australia, and is a citizen of that country. She arrived in the United States on September 3, 1953, at Honolulu, T. H., when she was admitted as a temporary visitor under bond in the amount of $500 for a period extended to March 2, 1955. She failed to maintain the temporary status under which she was admitted as a result of which deportation proceedings were instituted against her on May 24, 1955. She has been granted the privilege of voluntary departure.

The beneficiary has never been married. She is a registered nurse presently employed at the Grady Memorial Hospital at Atlanta, Ga., at a monthly salary of approximately $225. The beneficiary was graduated from the Royal Melbourne Hospital in Melbourne, Australia, as a registered nurse on July 16, 1953. Prior to her enrollment with the Royal Melbourne Hospital as a student nurse, she worked as a beautician for a brief period. The beneficiary's father, Edward M. Dew, and her sister, Greta Maie Dew, reside in Melbourne, Australia. Her mother, Victoria May Dew is presently visiting with the beneficiary in the United States.

Senator Richard B. Russell, the author of the bill, has submitted the following information in connection with the case:

MAY 2, 1955.

Hon. RICHARD B. RUSSELL,
United States Senator,
Senate Office Building, Washington, D. C.

DEAR SENATOR RUSSELL: I am writing to request your assistance in a situation that is extremely important to me. I realize how very busy you are as a Senator and would not address you if I knew of any alternative.

I am a citizen of Australia and am very hopeful of becoming a citizen of the United States.

I am 22 years old and have lived most of my life in Melbourne. I am unmarried. My family are Australian citizens.

I was trained as a nurse in the Royal Melbourne Hospital.

For years I have dreamed of coming to the United States and working here. I was told that in the United States there was a great shortage of nurses and that my services might be needed. In September 1953 I came to the United States and resided with relatives in Florida.

I learned that Grady Hospital in Atlanta was seriously in need of nurses with my training. Through Mr. Frank Wilson, superintendent of Grady, I made arrangements to become associated with the hospital and have now worked there several months. I gather that the hospital is well pleased with my work, and understand that officials of the hospital are writing to you directly to express their interest in having me stay there.

My status, from the standpoint of the United States Government, is as follows: In September 1953 I obtained through the United States consul in Melbourne a 6 months visitor's visa. In March 1954 this visa was extended for 6 months through immigration officials in Miami. Shortly thereafter I attempted to

obtain a temporary working permit, in order to work as a nurse, but was informed by immigration officials that nursing was a permanent, rather than temporary, occupation and that I could not qualify for such a permit unless I was doing work of a purely temporary nature. Nevertheless in September 1954 I received an extension of my visitor's visa and posted the required bond.

In October 1954 immigration officials informed me that I might be permitted to work here as a nurse if I secured a quota number made available to Australian citizens by the Justice Department. They informed me that such quotas were then open. I applied as directed by them with the Atlanta immigration officials. I was told that by filing for a quota number, which amounts to a request for permanent residence, I automatically ceased to be considered as a visitor. They told me that I could go to work at Grady and that possibly my request for a quota number would be granted within 2 or 3 months. I then went to work.

On April 21, 1955 the Miami immigration office wrote to me. They stated that, although I appeared to be eligible for first preference the Australian quota was already oversubscribed, that a quota number was not immediately available and that I must leave the United States within 30 days. A copy of this letter is enclosed.

This letter is a great shock. I feel that Grady Hospital is in great need of nurses with my training and that it would be helpful for the hospital if I am permitted to stay. I like my work and am fulfilling my ambition.

Since I do not understand the operations of the Justice Department and am not familiar with immigration procedure, I hope that you will not feel it improper if I place my situation before you. I will be most grateful for any assistance and assure you that I will be worthy of it.

Sincerely yours,

MYRA LOUISE DEW,
Grady Hospital, Atlanta, Ga.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Miami, Fla., April 21, 1955.

Miss MYRA LOUISE DEW,
Atlanta, Ga.

DEAR MISS DEW: Reference is made to your application for status of a permanent resident.

Your application was referred to our regional office at Richmond, Va. As a native of Australia, you are chargeable to the Australian quota. The State Department has advised that the Australian quota, including the first preference portion to which you appear to be eligible, is oversubscribed. Our regional office, therefore, found it necessary to order that your application be denied on the grounds that a quota immigrant visa was not immediately available to you. There is no appeal from this order.

Your passport and your visitor's permit are returned herewith. As you have abandoned your visitor's status by virtue of submitting your application for status as a permanent resident, it is necessary that you depart from the United States. Your departure from this country on or before 30 days from the date of this letter will be satisfactory to this Service. Your failure to depart on time may result in a forfeiture of the $500 immigration bond which was posted in connection with your last extension of stay.

The file relating to your case is being forwarded to our office in Atlanta, Ga. Any questions which you may have in connection with your case or in connection with your status in the United States should be communicated to the officer in charge at Atlanta.

Very truly yours,

JOSEPH SAVORETTI,
District Director.

GRADY MEMORIAL HOSPITAL,
Atlanta, Ga., May 9, 1955.

HON. RICHARD B. RUSSELL,
United States Senator,
Senate Office Building,
Washington, D. C.

DEAR DICK: It has come to our attention that Miss Myra Louise Dew, an Australian citizen who is presently employed at Grady Memorial Hospital as a graduate nurse, has received notice from the Department of Justice to leave the United States within 30 days from April 21, 1955. As you can see from the attached letter of this date from our director of nursing, Miss Dew's services are urgently needed at this hospital, and it is our desire to help her receive approval for continued employment in this country. She is competent, well-trained and cooperative, and we feel that we would experience a keen loss if we were deprived of her services.

We shall appreciate anything that you can do to help Miss Dew.

Kindest personal regards.

Sincerely yours,

FRANK WILSON, *Superintendent.*

GRADY MEMORIAL HOSPITAL,
Atlanta, Ga., May 9, 1955.

MR. FRANK WILSON,
Superintendent, Grady Memorial Hospital,
Atlanta, Ga.

DEAR MR. WILSON: On January 21, 1955, Miss Myra Louise Dew was engaged in the graduate nurse position, 2:30 to 11 p. m., ward D and the emergency clinic schedule. She has proven to be a valuable asset to our nursing department, and fills a very vital spot of our patient-care service. She is also a well-liked person who should maintain a splendid working relationship with our staff.

We are most anxious to do all in our power to keep Miss Dew on our staff, and especially when nurses are so urgently needed now and will be needed even more when we endeavor to man our new hospital.

Sincerely yours,

FRANCES L. HAMMETT,
Director of Nursing.

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Calendar No. 1125

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1113

UNIV. OF MICH.

AUG 1 1955

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ROSA ROPPO

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2036]

The Committee on the Judiciary, to which was referred the bill (S. 2036) for the relief of Rosa Roppo, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child, adopted by citizens of the United States, the status of a nonquota immigrant which is the status normally enjoyed by alien minor children of United States citizens.

STATEMENT OF FACTS

The beneficiary of the bill is a 14-year-old native and citizen of Italy who presently resides with her natural grandmother in Ceglie Del Campo, Bari, Italy. She was adopted in Chicago, Ill., on May 4, 1955, by Michael and Julia Roppo, citizens of the United States. The beneficiary's natural mother is deceased and her father lives at an unknown address in Italy. Her sister has also been adopted by the sponsors and resides with them in Chicago, Ill.

A letter, with attached memorandum, dated July 7, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 7, 1955

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 2036) for the relief of Rosa Roppo, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Chicago, Ill., office of this Service, which has custody of those files.

The bill is intended to confer nonquota status upon the alien child pursuant to sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, by providing that the child shall be considered the natural-born alien child of United States citizens.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ROSA ROPPO, BENEFICIARY OF S. 2036

The beneficiary, Rosa Roppo, whose name at birth was Rosa Cardone, a native and citizen of Italy, was born on August 5, 1941. She is presently residing with her maternal grandmother at Via Piave No. 27, Ceglie Del Campo, Bari, Italy.

She was adopted by Michael and Julia Roppo, citizens of the United States, in Superior Court of Cook County, Chicago, Ill., on May 4, 1955. Michael Roppo is the brother of her deceased mother. Her father is residing at an unknown address in Italy. Her sister, Elisa-Pompea Roppo, has also been adopted by Mr. and Mrs. Roppo and entered the United States as the beneficiary of private bill S. 2849 of the 83d Congress.

Rosa Roppo is attending fifth grade of grammar school. She has never been in the United States.

The beneficiary's adoptive parents, through whose efforts the bill was introduced, reside at 6545 Ponchartrain, Chicago, Ill. Mr. Roppo owns and operates a restaurant, deriving an income of about $8,000 annually. He has real and personal property valued at about $75,000 and cash savings of about $5,000. Mr. and Mrs. Roppo have supported the beneficiary since birth and presently send her from $600 to $700 annually in addition to clothing. They have stated that they will continue her support.

Senator Paul H. Douglas, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
June 2, 1955.

Re S. 2036, Rosa Roppo.

Hon. HARLEY KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

MY DEAR SENATOR KILGORE: In support of S. 2036, for the relief of Rosa Roppo, I am submitting the attached information for the consideration of your committee.

The beneficiary of this measure is a 13-year-old girl, a citizen of Italy, who has been adopted by Michael and Julia Roppo of Chicago, Ill., United States citizens. The deceased mother of Rosa was a sister of Michael Roppo.

Mr. and Mrs. Michael Roppo are responsible people, of good moral character, and are financially able to provide a good home and education for their adopted daughter.

I hope your committee will find it possible to favorably report S. 2036 in the very near future so that it will be possible for this child to join her adopted parents in the United States.

With kind regards,

Sincerely yours,

PAUL H. DOUGLAS.

STATE OF ILLINOIS,
County of Cook, ss:

IN THE CIRCUIT COURT OF COOK COUNTY

No. 55 C 4971

Michael Roppo an Julia Roppo, his wife, Petitioners v. *Raffaele Di Giovanni Cardone and Rosa Cardone, a minor, Defendants*

DECREE OF ADOPTION

Now on this 4th day of May, A. D. 1955, comes the said Michael Roppo and Julia Roppo, his wife, petitioners herein, and it satisfactorily appearing to the court that on the 30th day of March 1955, said petitioners filed in the office of the clerk of this court a petition for adoption, and it satisfactorily appearing to the court that said defendants, Raffaele Di Giovanni Cardone and Rosa Cardone, a minor, in said petition named, have been duly notified of the filing of said petition and the pendency of these proceedings by a notice having been caused to have been published more than 30 days prior to the first Monday of May, 1955, being the second day of May, A. D. 1955, and that said defendants in said petition named have been duly notified of the filing of said petition and of the pendency of this proceeding by publication of a notice thereof in the National Corporation Reporter, the same being a newspaper of general circulation in this County, on the first day of April, A. D. 1955.

And it further satisfactorily appearing to the court that subsequent to the filing of this lawsuit and prior to the 2d day of May 1955, the defendant, Raffaele Di Giovanni Cardone, the father of the defendant Rosa Cardone, a minor, did cause to have filed with the clerk of this court an entry of appearance and consent to all proceedings in the matter of the above-entitled cause and further the said defendant, Raffaele Di Giovanni Cardone, having filed no answer to said petition herein, as required by law, it is ordered that said petition and the matters and things therein set forth be taken as confessed against said defendant not answering:

And this cause coming on to be heard by the court and the court having heard the evidence submitted and the arguments of counsel, and now being fully advised in the premises finds that all material allegations of said petition are true as therein set forth;

And the court does find that the petitioners are husband and wife and that they reside in the city of Chicago, county of Cook and State of Illinois, and that they desire to adopt a female child who is a resident of the city of Ceglie del Campo, Province of Bari, Italy, and that the said child was of the age of 13 years on the 5th day of August 1954; that the said child's name was Rosa Cardone and that Raffaele Di Giovanni Cardone had the custody of said child at the time of the filing of the petition herein.

And the court further finds that the name of the mother of said child was Annunziata Cardone, who is now deceased and was deceased immediately prior to the filing of the petition to adopt the aforesaid Rosa Cardone.

And that the name of the father of said child is Raffaele Di Giovanni Cardone, who has heretofore caused his appearance to be filed in the above-entitled cause and further filed his consent to the entry of any and all orders that may be deemed necessary in the instant cause by this court.

The court further finds from the evidence that the aforesaid minor female child has not resided with the petitioners herein for a period of 6 months immediately preceding the filing of this petition, for the reason that the child resides in the jurisdiction of the Province of Bari, Italy, and has been unable to emigrate from Italy to the United States of America.

The court further finds that no objection has been raised by the investigating officer heretofore appointed by this court, namely, Rev. Daniel O'Rourke, pastor of St. Mary of the Woods Roman Catholic Church, and further that the guardian ad litem, John Griffin of Chicago, Ill., heretofore appointed by this court, was present at the hearing of the petition in the instant cause and offered no objection to a decree of adoption, and, in addition, stated that he thought it was to the best interest and future welfare of the child Rosa Cardone.

The court further finds that the petitioners herein are reputable persons of good moral character, with sufficient ability and financial means to rear, nurture, and educate said child in a suitable and proper manner, having due regard to the secular and religious fulfillment of said child's education.

It is, therefore, ordered, adjudged and decreed that, henceforth from the date hereof, the said child Rosa Cardone shall to all legal intents and purposes be the

child of said petitioners, Michael Roppo and Julia Roppo, his wife, and for the purposes of inheritance and all other legal purposes, instances and consequences, shall be the same as if said child Rosa Cardone had been born to them in lawful wedlock.

It is further ordered and decreed that the name of such child be and the same is hereby changed to Rosa Roppo, according to the prayer of the petition herein.

It is further ordered that the clerk of this court issue to the petitioners a certified copy of the decree after the same has been entered herein and the clerk is further ordered that this file be removed from the general court files and impounded until the further order of court.

Judge WILLIAM J. TUOHY.

Enter: May 4, 1955, Circuit Court.

ST. MARY OF THE WOODS RECTORY,
Chicago 30, Ill.

Hon. Senator PAUL DOUGLAS,
Washington, D. C.

DEAR SENATOR DOUGLAS: Mr. and Mrs. Michael Roppo of 6545 Ponchertrain are members of our parish. They are respected members of our community and are faithful and practicing Catholics. They have adopted Rosetta Cardone Roppo of Italy. I know they will provide a good home for her and will give her a Christian education. Any kindness you may be able to show them will be appreciated.

Sincerely,

Rev. DANIEL B. O'ROURKE.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2036) should be enacted.

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Calendar No. 1126

84TH CONGRESS
1st Session

SENATE

REPORT
No. 1114

AUG 1 1955

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MRS. GERTRUD HILDEGARD NICHOLS

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committtee on the Judiciary, submitted the following

REPORT

[To accompany S. 2575]

The Committee on the Judiciary, to which was referred the bill (S. 2575) for the relief of Mrs. Gertrud Hildehard Nichols, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 30-year-old native and citizen of Germany who presently resides in that country. She is married to T. Sgt. Robert G. Nichols, a United States citizen and member of our Armed Forces. The record discloses that the beneficiary was convicted in Germany on September 14, 1943, for the crime of theft involving 4 offenses within the period of March to July 1943. Without the waiver provided for in the bill, the beneficiary will be unable to accompany her husband to this country.

A letter, with attached memorandum, dated July 20, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 20, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington 25, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 2575) for the relief of Gertrud H. Nichols, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary.

The bill provides that, notwithstanding the provisions of section 212 (a) (9) of the Immigration and Nationality Act, the beneficiary may be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that act.

It appears that the beneficiary is eligible to nonquota status, and if otherwise qualified, able to obtain a nonquota immigrant visa.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE GERTRUD H. NICHOLS, BENEFICIARY OF PRIVATE BILL S. 2575

Information concerning the beneficiary was obtained from a report submitted to the chairman, Committee on the Judiciary, House of Representatives, dated August 3, 1954, and was furnished by her then fiance, Robert G. Nichols, 10th Troop Carrier Squadron, APO 57, care of Postmaster, New York, N. Y.

On July 20, 1955, the office of Hon. Robert C. Byrd, House of Representatives, advised that they had received information on July 7, 1955, from the Director, Visa Office, Department of State, stating that Mrs. Nichols was given a provisional visa clearance on October 5, 1954, prior to her marriage to Mr. Nichols in the belief that her case came within the provisions of Public Law 770.

The beneficiary has never resided in the United States and her present address is Sauerstrasse No. 25, Frankfurt, Nied., Germany. Further information relating to the beneficiary is unobtainable, but it appears she was denied a visa in Frankfurt, Germany, in 1953, because of her conviction for a crime involving moral turpitude, to wit theft. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to secure information in this connection.

The sponsor, Robert G. Nichols, was born in Beckley, W. Va., on April 20, 1929. He graduated from Beckley High School in 1947 and on January 28, 1948, he enlisted in the United States Air Force. From the available information it appears that he is presently serving with the United States Air Force in Frankfurt, Germany.

The sponsor has never been gainfully employed except by the United States Air Force where he presently resides and holds the rating of technical sergeant. He is an aircraft inspector and earns approximately $2,441.52 per year. His parents, brother and sister reside in the United States. His parents are divorced.

The alien was also the beneficiary of H. R. 7074 in the 2d session of the 83d Congress and H. R. 7110 1st session of the 84th Congress. H. R. 7221, 84th Congress, also relates.

In addition, the Director of the Visa Office, Department of State, wrote the following letter to Congressman Robert C. Byrd, on July 7, 1955, as follows concerning the beneficiary of the bill:

DEPARTMENT OF STATE,
Washington, July 7, 1955.

DEAR MR. BYRD: I refer to your interest in the visa case of Gertrud Hildegard Schoetz Nichols, the wife of Robert G. Nichols, an American citizen.

Mrs. Nichols, prior to her marriage was named Gertrud Hildegard Schoetz and was the subject of H. R. 7074 (83d Cong., 2d sess.) which you introduced under date of January 7, 1954. The following information has been received from the consulate at Frankfort, Germany, under date of June 8, 1955, concerning Mrs. Nichols' case.

"Mrs. Gertrud Nichols, born October 30, 1924, in Frankfort, Germany, was convicted by the local court in Frankfort on September 14, 1943, for continuous theft under paragraph 242 of the German Penal Code and sentenced to 6 months' imprisonment. Mrs. Nichols was convicted of stealing on four occasions within the period March to July 1943. She stole the belongings of guests in the hotel where she was employed as a chambermaid. The order of punishment, a translation of which is attached, indicates that she was convicted on the basis of her own confession. The court records contain no copy of her confession. It has proved impossible to determine the value of the goods involved, although it seems reasonable to assume that they did not exceed $100. * * *"

The report states that Mrs. Nichols was given a provisional visa clearance on October 5, 1954, prior to her marriage to Mr. Nichols, in the belief that her case came within the provisions of Public Law 770 under which an alien who has committed only one offense amounting to a misdemeanor would not be ineligible to receive a visa.

However, upon consideration of the facts in the case of Mrs. Nichols, the consul at Frankfort was informed under date of June 29, 1955, that, since the record in her case shows that she was convicted for thefts which occurred over a period of several months, the conclusion was inescapable that the criminal acts were committed on separate and distinct occasions and that, therefore, the case would not come within the provisions of Public Law 770 relating to the cases of aliens who committed only one offense involving moral turpitude.

Accordingly, Mrs. Nichols is considered to be ineligible under the provisions of section 212 (a) (9) of the Immigration and Nationality Act to receive an immigrant visa. The passage of a private bill to remove this ground of ineligibility would be necessary before she could be granted an immigrant visa, provided of course that she is found to be otherwise eligible therefor under the immigration laws.

Sincerely yours,

ROLLAND WELCH,
Director, Visa Office.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2575) should be enacted.

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Calendar No. 1127

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1115

LAURA SAFIR

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 939]

The Committee on the Judiciary, to which was referred the bill (H. R. 939) for the relief of Laura Safir, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Laura Safir. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 39-year-old native of Rumania, presently stateless, who last entered the United States on August 27, 1953, as a visitor. The beneficiary graduated from the University of Bucharest in 1935 with a degree of doctor of laws. She is presently a student at Hunter College, New York. The beneficiary's brother and sister are citizens of the United States. She states that in 1947 she was expelled from the Rumanian Bar Association because of her refusal to accept Communist doctrine. The beneficiary made her way to France in 1948, where she remained until her entry into the United States.

A letter, with attached memorandum, dated May 6, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration andNaturalization with reference to the case, reads as follows:

MAY 6, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 939) for the relief of Laura Safir, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of these files.

The bill would grant this alien the status of a permanent resident of the United States upon payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota.

The beneficiary is chargeable to the quota of Rumania.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LAURA SAFIR, BENEFICIARY OF H. R. 939

The beneficiary, Laura Safir, was born July 7, 1915, at Botosani, Rumania, and is presently stateless. She married Alfred Z. Finkelstein, a native Rumanian citizen, in 1938, and was granted a divorce from him in 1946. The beneficiary resides at 120 East 73d Street, New York, N. Y. She is by profession a counselor at law, and was admitted to practice in Bucharest, Rumania, in 1941. She graduated from the University of Bucharest in 1935, with a degree of doctor of laws. The beneficiary later attended the Institute Du Payot in Paris, France, for 1 year, and is at present a student of English at Hunter College, New York, N. Y. Her assets consist of bank deposits of $8,000 in the United States, and about $20,000 credited to her account abroad. The beneficiary's mother, Fannie Safir, a Rumanian national, is a resident of Bucharest, Rumania. Her brother and sister are naturalized citizens and residents of the United States. She left Rumania in 1948 because of the existing political conditions and went to France, where she remained until her departure for the United States.

The beneficiary's only entry into the United States occurred at New York, N. Y., on August 27, 1953, at which time she was admitted as a visitor until November 6, 1953. She received an extension of her temporary stay until April 23, 1955. Deportation proceedings were instituted on February 28, 1955, on the ground that after admission as a visitor for pleasure, she failed to maintain the nonimmigrant status in which she was admitted.

Congressman Frederic R. Coudert, the author of the bill, submitted the following information in connection with the case:

GUILD FILMS CO., INC.,
New York, N. Y., June 6, 1955.

To Whom It May Concern:

I have known Miss Laura Safir for the past year and have found her to be a person of responsibility and integrity.

I have every confidence that Miss Safir will make an eminently worthwhile American citizen, completely worthy of the heritage of our country.

Very truly yours,

MANNY REINER, *Vice President.*

KENNEDY MUSIC CORP.,
New York 20, N. Y., June 6, 1955.

To Whom It May Concern:

I wish to state that I have known Laura Saphir for upward of a year and consider her to be a person of excellent character, of exceptional intellect, with considerable educational attainments and a well-integrated mentality. The applicant moves on an excellent social level and her reputation and behavior are beyond reproach. Much of her time is devoted to the perfection of her already good knowledge of the English language and she is inclined to work for charity.

She is politically educated and strongly anti-Communist, she and her family, I understand, having suffered much under such regimes.

To the best of my knowledge and belief this applicant is commendable as a resident and/or future citizen and one who will be an asset to the country of her adoption.

JAMES KENNEDY.

NEW YORK, N. Y., *June 6, 1955.*

To Whom It May Concern:

This is to certify that the undersigned has been acquainted with Miss Laura Safir of 120 East 73d Street for quite some time. I have found her to be of good character and reputation and, in my opinion, will make a desirable citizen of this country.

Respectfully yours,

ALBERT D. LEVIN,
Counselor at Law.

STATE OF NEW YORK,
County of New York, City of New York, ss:

Laura Safir, being duly sworn, deposes and says:

That I was born at Botosani, Rumania, on the 17th day of July 1915.

That I studied law at the University of Bucharest, and after graduation in 1935, I was admitted to the Rumanian Bar Association in 1941.

That in 1938, I married a lawyer, Alfred Zaharia Finkelstein. This marriage was dissolved on April 10, 1946, when I won a divorce from my husband.

That in 1947, I was expelled by Communist leaders from the Rumanian Bar Association, because of my refusal to accept Communist doctrine. At the same time, the Red dictatorship took harsh reprisals against my family, every member of which stoutly fought the party line. My sister was deported with her husband and family, and their possessions confiscated. My brother, Nicolae Napoleon, a Rumanian Army colonel, was expelled from the services as a nonconformist. He passed away 7 months ago. Another brother, Samuel, was thrown in prison as a means of extorting heavy cash payments from him.

That in 1948 in exchange for virtually all of my personal possessions, I was able to obtain exit passports for myself, my brother, Samuel, and the latter's family. This was in April. We went to Switzerland, following the ordeals with Rumanian communism, to regain our health. Shortly afterward we made our way to Paris, where we immediately renounced the Rumanian passports and were officially accepted by the French Government as stateless persons. I registered with the International Refugee Office. I studied the art of professional beauty treatment at the Institute Dr. N. G. Payot, Paris.

That in 1952 I officially requested from the American consulate in Paris authorization to visit the United States. I had, and still have a married sister in Pittsburgh and a married brother in Buffalo. Both are American citizens, have lived here since 1950, have raised successful families, and are financially responsible. Other close relatives include Sidney Adler, a lawyer in Philadelphia, and Samuel and Rose Rudick, hotel owners in California.

That on the 27th of August 1953, I arrived in the United States on a visitor's visa which had been renewed twice.

That having been allowed to remain in the United States for 16 months, and having been able to appreciate its freedom and liberties as no one in Europe can, I made a formal request, in January, for permission to live in the United States permanently. My greatest desire is to become an American citizen and to show myself worthy of such citizenship. I cannot return to Rumania because, under existing statutes in that country my life would be forfeited. Nor can I return to France, because I lost the privilege of being a resident in that country; by remaining more than 6 months in another country one automatically loses this privilege. Furthermore, while I resided in France, I never had the right to work there.

That, at the present time, I am studying at Hunter College, in New York City. However, the college authorities have informed me that to be enrolled for credits I must have either a student's visa or a permanent residence of the United States. My desire is to dedicate my time and knowledge to the field of juvenile delin-

quency, in which field I am sure to be helpful because of my background, my experience, and my love and understanding of children.

LAURA SAFIR.

Sworn to before me this 7th day of June 1955.

[SEAL] CHARLES I. KATZ,
Attorney and Counsellor at law, State of New York.

Commission expires March 30, 1956.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 939) should be enacted.

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Calendar No. 1128

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1116

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JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 999]

The Committee on the Judiciary, to which was referred the bill (H. R. 999) for the relief of Nurith Spier, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child adopted by lawfully resident aliens of the United States the status of a third preference quota immigrant which is the status normally enjoyed by the minor alien children of lawfully resident aliens of the United States.

STATEMENT OF FACTS

The beneficiary of the bill is a 14-year-old native of Palestine and citizen of Israel. She was adopted in Israel in 1946 by Mr. and Mrs. Walter Spier, who were admitted to the United States for permanent residence on July 14, 1954. The Israeli quota, to which the beneficiary is chargeable, was oversubscribed and she was unable to obtain a visa to enter the United States with her adoptive parents. The beneficiary presently resides in Norway and is being cared for by her adoptive mother's brother.

A letter, with attached memorandum, dated May 12, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case reads as follows:

MAY 12, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 999) for the relief of Nurith Spier, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Miami, Fla. office of this Service, which has custody of these files.

The bill would provide that the beneficiary shall be considered to be the natural born alien child of lawfully resident aliens of the United States, thereby conferring upon her eligibility to a preference status under the German quota which is understood to be currently available. In the absence of special legislation, the beneficiary is chargeable to the Israli quota, which is currently oversubscribed.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING NURITH SPIER, BENEFICIARY OF H. R. 999

The beneficiary was born May 27, 1941, in Jerusalem, Palestine, now Israel, and is an Israeli citizen. She has never been in the United States. She is presently residing care of Hans Happ, Petranorg, Konnerud, Dramman, Norway.

Information concerning the beneficiary was furnished by her adoptive parents, Mr. and Mrs. Walter Spier (Walter and Edith Spier). The beneficiary was adopted by Mr. and Mrs. Spier in 1946, in a British court in Jerusalem. She was raised in an orphanage prior thereto and has no knowledge of her natural parents. The adoptive parents of the beneficiary have no other children. They resided in Israel for 21 years, where Mr. Spier operated a butcher shop. The Spiers arrived in the United States as German quota immigrants on July 14, 1954. The family was thus separated because of the nonavailability of a quota number under the Israeli quota, to which the beneficiary is chargeable.

Mr. and Mrs. Spier reside at 2127 Southwest Fifth Street, Miami, Fla. Mr. Spier earns about $6,000 a year as a butcher in the employ of a cousin, Max Bauer, in a packinghouse which Mr. Bauer operates in Hialeah, Fla. The beneficiary is wholly dependent upon her adoptive parents. The beneficiary is sojourning with Hans Happ, her adopted mother's brother, in Norway. Mr. Happ is a dentist, and it is indicated that he is unable to furnish living quarters to the beneficiary for any appreciable further period.

The committee may wish to communicate with the Bureau of Security and Consular Affairs of the Department of State for further information concerning the beneficiary.

The Director of the Visa Office, Department of State, submitted the following report dated May 12, 1955, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, D. C., May 12, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Reference is made to your letter of February 14, 1955, and its enclosures, where you requested a report of the facts in the case of Miss Nurith Spier, beneficiary of H. R. 999, 84th Congress, 1st session.

A report recently received by the Department from the American Embassy at Tel Aviv, Israel, states that Miss Nurith Spier, now understood to be residing with the brother of her adoptive father in Oslo, Norway, is still registered at the Embassy under the nonpreference portion of the Israeli quota with a registration priority of September 3, 1953. No request has yet been received from the Embassy at Oslo for the transfer of her dossier.

The report goes on to say that the adoptive parents of Miss Spier, Mr. and Mrs. Walter Spier, were issued immigrant visas on May 18, 1954, under the nonpreference portion of the German quota.

As the nonpreference and fourth preference portions of the Israeli quota are oversubscribed, it is anticipated that Miss Spier would undergo a considerable period of waiting before a number could be alloted for her use.

At the present time there is no information in the Department's files from which it could be ascertained whether or not Miss Spier would be eligible in all respects to receive a visa.

Sincerely yours,

ROLLAND WELCH, *Director, Visa Office.*

Congressman Dante B. Fascell, the author of the bill, submitted the following letters in support of the bill:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 3, 1955.

In re H. R. 999, Nurith Spier.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D. C.

DEAR MR. CHAIRMAN: I have already requested that the above-named bill be scheduled for hearing and in view of the urgency of this case, as described in the enclosed letter, I felt compelled to contact you once again.

This young lady is about 14 years old, a critical age in a youngster's life, and it appears she is the innocent victim of some type of misunderstanding between her adoptive mother who is in this country and her uncle who is caring for her in Norway. Since the mother has no other relatives in Europe, there is naturally a great deal of consternation here as to what will become of the young lady if her uncle decides to terminate his support and care.

I would appreciate hearing from you if there is any possibility that her bill may be brought up now for hearing.

Sincerely yours,

DANTE B. FASCELL, M. C.

MIAMI, FLA., *June 2, 1955.*

Re Nurith Spier.

Hon. DANTE B. FASCELL,
New House Office Building, Washington, D. C.

DEAR DANTE: As soon as I received your letter of May 26, I immediately communicated with Mrs. Spier and again received a tale of woe. She states that her brother, Hans Happ, in Norway, is reluctant to continue to support and provide a home for Nurith. He is requesting them to make some other arrangements, and as they have no other relatives in Europe, they do not know what to do.

You state that you expect to receive a notice shortly that the bill has been docketed and set for hearing. If possible to exert any pressure for an early date, it would greatly relieve the situation. Mr. Lane, of the local immigration office, has been cooperative and also feels deep sympathy toward Mr. and Mrs. Spier.

From your letter I note that there is nothing further that both Mr. Lane and myself can do here in Miami. If I can be of any assistance in arranging for an early date for the hearing, I would not hesitate to meet you in Washington. If my brother can be of any assistance in this matter, I am sure he will cooperate.

With kindest personal regards, I remain,

Sincerely yours,

DAVID LEMELMAN.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 999) should be enacted.

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Calendar No. 1129

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1117

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ANNA HISTED, NEE WIESNETH

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1159]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1159) for the relief of Anna Histed, nee Wiesneth, having considered the same, report favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the wife of a United States citizen serviceman.

STATEMENT OF FACTS

The beneficiary of the bill is a 31-year-old native and citizen of Germany who presently resides in that country. She was married in Germany on June 2, 1954, to Sgt. James Histed, a United States citizen presently serving in the Pacific theater of operations. The beneficiary has a 10-year-old son. The record discloses that the beneficiary was convicted of larceny in 1943 and attempted fraud in 1948, and without the waiver provided for in the bill, the beneficiary will be unable to qualify for a visa to enter the United States.

A letter, with attached memorandum, dated December 9, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 9874, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

DECEMBER 9, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 9874) for the relief of Anna Wiesneth there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalisation Service files relating to the beneficiary by the Tacoma, Wash., office of this Service, which has custody of those files. The beneficiary's married name is Anna Histed.

The bill would authorize the beneficiary's admission to the United States for permanent residence notwithstanding the excluding provisions of section 212 (a) (9) of the Immigration and Nationality Act relating to aliens who have committed crimes involving moral turpitude, if she is found to be otherwise admissible.

It is suggested that the beneficiary may now be eligible for the issuance of an immigration visa pursuant to section 4 of the act of September 3, 1954 (68 Stat. 1145), with respect to aliens who have committed a single offense of a minor nature.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANNA HISTED, NEE WIESNETH BENEFICIARY OF PRIVATE BILL H. R. 9874

Information concerning the case was obtained from Sgt. James Histed, the husband and sponsor of the beneficiary, immediately prior to his departure for Korea. Sgt. James Histed was born July 14, 1924 at Holbert, Mich. and lived in that State until he enlisted in the United States Navy on July 23, 1943. Following his discharge from the Navy in October 1945 he enlisted in the United States Army and has since served therein continuously. His second tour of duty in Germany was from April 1949 to June 21, 1954. It was during this period that he met the beneficiary. He married her at Amberg, Germany on June 2, 1954. He returned to the United States on July 22, 1954 and was on leave status visiting his mother, Maggie Histed at 3109 Lyndon Avenue, Flint, Mich., until October 27, 1954, when he departed from Fort Lewis, Wash. as a casual for further assignment, this new address being APO 973, care of postmaster, San Francisco, Calif. The sponsor testified that he owns his home where his mother resides and that he sends $120 a month to his wife, the beneficiary.

The beneficiary was born at Amberg, Germany on February 21, 1922. Since completing school in Amberg, she has been employed as a waitress at Amberg and Bamberg, Germany, and is presently residing with her mother at Katharinen Hohe 13, Amberg. Her father is deceased and she has an illegitimate son, Hansel Wiesneth, age 10.

The sponsor stated that the American consul in Germany refused the beneficiary a visa on the ground that she had committed a crime, in Germany, involving moral turpitude. He stated that she had been court martialed for leaving her job in an ammunition factory during the war because she was pregnant. He further stated that in April 1948 she was arrested on the complaint of a shoe store, that she had accepted too much money in change on the purchase of a pair of shoes and failed to report the shoe clerk's error. The sponsor testified that he has never been arrested.

Inasmuch as the beneficiary is residing abroad, the committee may wish to make further inquiry in this case of the Bureau of Security and Consul Affairs of the Department of State.

The Director of the Visa Office, Department of State, submitted the following report dated February 17, 1955, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, February 17, 1955.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Reference is made to Mr. Reed's letter of August 5, 1954 and its enclosures, wherein a report was requested on the visa case of Anna Wiesneth, beneficiary of H. R. 9874, 83d Congress, 2d session.

Information has been received from the American consulate general at Munich, Germany, that Miss Wiesneth was convicted by courts of competent jurisdiction in Germany of larceny in 1943 and attempted fraud in 1948. Copies of the records of conviction are enclosed for your convenient reference.

The crimes of attempted fraud and larceny have been held to involve moral turpitude within the meaning of section 212 (a) (9) of the Immigration and Nacionality Act, which renders ineligible to receive visas and excludable from the United States aliens who have been convicted of, or admit having committed a crime involving moral turpitude. As a consequence, the responsible consular officer would have no choice under the law but to continue to withhold the issuance of a visa to Miss Wiesneth.

Inasmuch as Miss Wiesneth was convicted of more than one offense involving moral turpitude, her case would not be embraced within the provisions of section 4 of Public Law 770, 83d Congress, 2d session.

At this time the Department has no knowledge of any factor in Miss Wiesneth's case, other than the information hereinbefore cited; which would render her ineligible to receive a visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Miss Wiesneth from receiving a visa.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Secretary of State).

SERVICE COMPANY, 26TH INFANTRY REGIMENT,
APO 1, CARE OF POSTMASTER, NEW YORK, N. Y.,
Bamberg, Germany, March 31, 1954

THE IMMIGRATION AND NATURALIZATION SUBCOMMITTEE
OF THE HOUSE JUDICIARY COMMITTEE,
Washington 25, D. C.

DEAR HONORABLE SIRS: By the present I beg to submit my following private case to you.

It concerns my alien fiance, whose name is Anna Wiesneth of Bamberg, Germany, 92 Stauffenbergstrasse. I have the true and earnest intention to marry her. As I am a member of the United States Army in Europe, I have submitted my petition for the permission to marry through the official channels. However, my permission has been disapproved by the American consulate general, Munich, Germany, because my fiance has been found unqualified for the immigration into the United States as she had previously committed a minor offense. I was advised that the American consulate cannot revoke its disapproval; only the Congress of the United States can waive the decision of the consulate by a special private law to grant my fiance the entry into the United States.

As you being the appropriate authority for such matters, kindly consider the case of my fiance for a recommendation before the Congress of the United States, and, when you think this case of my fiance being good for recommendation, please introduce legislation requesting that a waiver be granted in her case.

Already more than 6 years I am engaged to Anna Wiesneth. I love her very much and we have great affections to each other. Nothing could cause me to give her up. Even she has previously convicted, one cannot say she has a bad character and is of turpitude. She has rued the minor offense already a million times.

Also the German courts, which previously convicted her, have granted her relief as they ordered the appropriate German authority for prosecution to strike out all previous convictions from my fiance's penal record. According to the German laws, such means that my fiance, from the time when the conviction has been stricken out from the records, is always considered as not being previously convicted.

As proof that my fiance has not a bad character, I enclose character references of persons, who know her already for a considerable length of time.

Yours faithfully,

JAMES P. HISTED,
Sergeant, RA 16230548

Received on January 30, 1954.
Dispatched on: ———.

RE PETITION ENTERED BY THE HOUSEMAID ANNA WIESNETH OF BAMBERG FOR REMOVAL OF CONVICTIONS (FROM THE PENAL REGISTER)

BAVARIAN STATE MINISTER OF JUSTICE,
Munich, 35, January 18, 1954.

To: Miss Anna Wiesneth, Bamberg, Lindenanger 2.
Through: Dr. Rosenberg, Esq., attorney at law, Bamberg.

Anna Wiesneth has been punished as follows:

1. On December 14, 1943, the Landgericht (county court), Ansbach, as the appropriate court of appeal fined her with 150 RM for one minor crime of larceny instead of 30 days' imprisonment, which in the abstract she had forfeited.

2. On October 6, 1948, the Amtsgericht (lower court), Bamberg, punished her by 25 days' imprisonment for one attempt of fraud.

It is hereby ordered that the remarks in the penal register, referring to the above-listed convictions, be removed.

[SEAL]

True copy: [illegible]
Registrar Obersekretär.
By Dr. KOCH,
Staatssekretär.

I hereby certify above to be a true and complete translation from German into English as same appears on the original.

BAMBERG, FEBRUARY 5, 1954.

JOSEF DONTSCHEFF,
Public Sworn Translator, Bamberg, Kettenbrückstrasse 1c.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 1159) should be enacted.

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Calendar No. 1130

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1118

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VITTORIO CAPANO

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

To accompany H. R. 1160]

The Committee on the Judiciary, to which was referred the bill (H. R. 1160) for the relief of Vittorio Capano, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child to be adopted by citizens of the United States the status of a nonquota immigrant which is the status normally enjoyed by the alien minor children of United States citizens.

STATEMENT OF FACTS

The beneficiary of the bill is an 18-year-old native and citizen of Italy who presently resides in that country with his father and sister. The beneficiary's father was naturalized a citizen of the United States in 1918 while serving with the United States Army and is a totally disabled veteran. However, he returned to Italy in 1932 because of ill health, and the Department of State has held that he lost his United States citizenship by reason of conduct evincing an acceptance of Italian nationality. He was not, therefore, a citizen at the time of the beneficiary's birth in 1937. The beneficiary's uncle and aunt by marriage desire to have the beneficiary come to this country so that they can educate him properly.

A letter, with attached memorandum, dated June 1, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., June 1, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 1160) for the relief of Vittorio Capano, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Boston, Mass., office of this Service which has custody of those files.

The bill provides that section 101 (b) (1) (A) of the Immigration and Nationality Act shall be considered to be applicable to the beneficiary. It further provides that the beneficiary's father, who is a former citizen of the United States and a disabled veteran of World War I, shall be eligible to file a petition prescribed by section 205 of said act. The bill is apparently intended to grant the beneficiary nonquota status in the issuance of an immigrant visa by considering his father to be a citizen of the United States. If so, the first statutory reference in the bill should be changed to read "Section 101 (a) (27) (A) of the Immigration and Nationality Act".

As a quota immigrant the beneficiary would be chargeable to the quota of Italy.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE VITTORIO CAPANO, BENEFICIARY OF H. R. 1160

Information concerning the beneficiary, who has never been in the United States, was furnished by his sponsor-uncle, Antonio Capano, a United States citizen who resides at 109 Harbor Street, Lynn, Mass.

Vittorio Capano is a native and citizen of Italy, born February 12, 1937, in Cardinale. He is the legitimate son of Pietro Capano. He has never been married and has resided from birth with his father and sister, Francina Capano, in Cardinale, San Sansostene, Italy. The alien, who is unemployed, is dependent upon his father for support. He has graduated from primary school and is currently a secondary school student in Cardinale, Italy. His mother is deceased. His only other near relatives in this country are his aunt by marriage to his sponsor-uncle (Mrs. Maria Josephina Capano) and their only son, Gregory Capano, now 34 years of age.

The alien's father, Pietro Capano, who was born in Italy in 1890, came to the United States in 1907. He was naturalized a citizen of the United States in 1918 while serving with the United States Army. He is a totally disabled veteran and receives a monthly disability allotment from the United States Government of $111.90. The beneficiary's father returned to Italy in 1932 because of ill health, and the Department of State has held that he lost his United States citizenship in 1934 by reason of conduct evincing an acceptance of Italian nationality, which he reacquired under Italian law. He was consequently, not a United States citizen at the time of the birth of his son, Vittorio, in 1937. The beneficiary did not, therefore, acquire United States citizenship through his father. No information has been received indicating that the beneficiary's father desires to return to the United States.

The sponsor, Antonio Capano, who is the brother of the beneficiary's father, has resided in the United States since 1920 and was naturalized a citizen of the United States on March 26, 1936. He was married in 1919 and resides with his wife and son. He owns his home in Lynn, Mass., is the owner and operator of a garage and gasoline station from which he receives an income of about $250 a month, has buildings and land and another garage at 611 Broad Street, Lynn, Mass., all of which are valued at $35,000. In addition, he has on deposit $2,100 in a bank in Lynn. Between August 1928 and January 1930, the sponsor was convicted six times for violations of liquor laws, and in September 1939 he was convicted of assault with a dangerous weapon and fined $100. Mr. Antonio Capano intends to take his nephew into his home, educate him properly, and

have him serve in the United States Army, if able to enter the United States and to qualify for Army service.

The sponsor is the person primarily interested in the private bill. Private bills S. 2265 and H. R. 4863 were introduced in the 83d Congress on June 27, 1953, and April 24, 1953, respectively, in behalf of the alien.

The committee after consideration of all the facts in the case is of the opinion that the bill (H. R. 1160) should be enacted.

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Calendar No. 1131

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1119

UNIV. OF MICH.

AUG 1 1955

LAW LIBRARY

LUIGI TOMASELLA

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1976]

The Committee on the Judiciary, to which was referred the bill (H. R. 1976) for the relief of Luigi Tomasella, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of the husband of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 48-year-old native and citizen of Italy who presently resides in that country. He was married in February 1931 in Italy to Rosa Bersaglieri, a United States citizen who was taken to Italy when she was 1 year of age. She returned to the United States on May 5, 1952. The beneficiary was convicted for the theft of 14 bundles of wood over a period of approximately 2 weeks on February 29, 1932, and without the waiver provided for in the bill, he will be unable to join his citizen wife in this country.

A letter, with attached memorandum, dated October 5, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 10050, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

OCTOBER 5, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 10050) for the relief of Luigi Tomasella,

there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Newark, N. J., office of this Service, which has custody of those files.

The bill would waive the provision of the Immigration and Nationality Act, which excludes from admission into the United States aliens who have been convicted of a crime involving moral turpitude, and would grant the alien permanent residence if he is found to be otherwise admissible.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM THE IMMIGRATION AND NATURALIZATION SERVICE FILES RE LUIGI TOMASELLA, BENEFICIARY, PRIVATE BILL (H. R. 10050)

Mrs. Rosa Tomasella, 598 North 6th Street, Newark, N. J., who is the wife of Luigi Tomasella, the beneficiary of the bill, furnished the following information:

The beneficiary, Luigi Tomasella, a native and citizen of Italy, was born in Polezzi, Generosa, Sicily, Italy, in April 1907. He resides in that town at Via Garoffo No. 8. He has been found excludable under section 212 (a) (9) of the Immigration and Nationality Act in that he has been convicted of a crime involving moral turpitude, to wit, theft of firewood.

Mr. Luigi Tomasella attended 2 years of public school in Polezzi, Generosa, Sicily, Italy. He is employed as a farmhand. He served with the Italian Army (Bersaglieri) from 1927 to 1928. In February 1931, at Polezzi, Italy, he married the sponsor, a native and citizen of the United States. This was the first marriage for both.

Mrs. Rosa Tomasella was born in New York City, N. Y., on September 6, 1906. She was taken to Italy by her parents when she was approximately 1 year old. She returned to the United States on May 5, 1952. She resides with her children at 598 North 6th Street, Newark, N. J. Since her entry she has not been employed and is supported by her daughter Miss Maria Tomasella. She has no real or personal property.

The Director of the Visa Office, Department of State, submitted the following report, dated August 17, 1954, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, August 17, 1954.

HON. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter of July 28, 1954, and its enclosures, wherein you request a report of the facts in the case of Luigi Tomasella, beneficiary of H. R. 10050, 83d Congress, 2d session.

It appears from information furnished the Department by the American consulate general at Palermo, Italy, that on February 29, 1932, Mr. Tomasella was convicted of theft by the tribunal of Termini Imerese, Province of Palermo. The court records state that Mr. Tomasella was accused of having stolen 14 bundles of wood over a period of approximately 2 weeks.

As theft, also known as larceny or stealing, has been held to constitute a crime involving moral turpitude within the meaning of the provisions of section 212 (a) (9) of the Immigration and Nationality Act, the American consular officer to whom Mr. Tomasella should apply would have no alternative other than to refuse to issue a visa in his case.

At this time the Department has no knowledge of any factor in Mr. Tomasella's case, other than the information hereinbefore cited, which would render him ineligible to receive an immigrant visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Mr. Tomasella from receiving a visa.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Secretary of State).

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 1976) should be enacted.

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Calendar No. 1132

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1120

UNIV. OF MICH.

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MIGUEL SANDOVAL-MICHEL (ALSO KNOWN AS ARTURO RODRIGUEZ-GOMEZ)

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2788]

The Committee on the Judiciary, to which was referred the bill (H. R. 2788) for the relief of Miguel Sandoval-Michel (also known as Arturo Rodriguez-Gomez), having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provisions of existing law relating to one who has been deported from the United States and one who attempts to obtain a visa by fraud and misrepresentation in behalf of the husband of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 27-year-old native and citizen of Mexico who last entered the United States on February 15, 1953, as an agricultural laborer. The beneficiary was granted voluntary departure to Mexico in May 1944. Thereafter he reentered the United States unlawfully and was deported three times to Mexico. On December 5, 1946, the beneficiary was arraigned and entered a plea of guilty to illegal entry after deportation. Imposition of sentence was suspended and he was placed on probation for a period of 2 years on condition that he depart immediately and remain outside the United States unless given lawful permission to enter. As an alien who had been deported, the beneficiary was not admissible at the time of his last entry. The beneficiary was married to a United States citizen and they now have two citizen children. With the waivers provided for in the bill the beneficiary will be able to

depart from the United States and obtain a visa to reenter the United States and rejoin his citizen wife and children.

A letter, with attached memorandum, dated May 17, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., May 17, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 2788) for the relief of Miguel Sandoval-Michel (also known as Arturo Rodriguez-Gomez), there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Los Angeles, Calif., office of this Service, which has custody of those files.

The bill would grant the alien the status of a permanent resident of the United States upon payment of the required visa fee.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MIGUEL SANDOVAL-MICHEL (ALSO KNOWN AS ARTURO RODRIQUEZ-GOMEZ), BENEFICIARY OF H. R. 2788

The beneficiary, Miguel Sandoval-Michel, who is also known as Arturo Rodriquez-Gomez, a native and citizen of Mexico, was born in Union de Tula, Jalisco, Mexico, on September 17, 1927. The beneficiary is married to Virginia Castillo, a native-born United States citizen. They have two children, Rosa Maria, born in Santa Ana, Calif., on April 14, 1953, and Miguel, born in Santa Ana, Calif., on May 27, 1954. The beneficiary resides with his wife and children in San Juan Capistrano, Calif.

The beneficiary attended school in Mexico for 4 years. He is an agricultural laborer by occupation, and is presently employed as such by the Brown Seed Co., San Juan Capistrano, Calif. His present rate of pay is $0.90 an hour, plus his housing. The beneficiary's assets consist of an automobile valued at $100. He has no dependents other than his wife and children.

The beneficiary was granted voluntary departure to Mexico in May 1944. Thereafter he reentered the United States unlawfully and was deported three times to Mexico via San Ysidro, Calif. in April 1946, December 1946, and August 1947. On December 5, 1946, the beneficiary was arraigned in United States district court, San Diego, Calif. He entered a plea of guilty to illegal entry after deportation. Imposition of sentence was suspended and he was placed on probation for a period of 2 years, on condition that he leave the United States immediately and that he remain outside of the United States unless given lawful permission to enter. The beneficiary last entered the United States as an agricultural contract laborer at Calexico, Calif., on February 15, 1953. As an alien who had been deported more than one time, he was not admissible as an agricultural contract laborer. Deportation proceedings were instituted in his case on October 30, 1953, and, after hearing, the beneficiary was ordered deported from the United States. His appeal from this order was dismissed by the Board of Immigration Appeals on December 17, 1954, and warrant for his deportation was issued on January 13, 1955.

The beneficiary has no relatives living in the United States other than his wife and children. His parents presently reside in Mexico.

Congressman James B. Utt, the author of the bill, submitted the following information in connection with the case:

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 4, 1955.

Re H. R. 2788.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In reference to your communication of March 2, inviting my attention to rule 5 of the Judiciary Committee Rules of Procedure, I would like to submit the following information:

1. Miguel Sandoval-Michel entered the United States on February 16, 1953, at Calexico, Calif., as an agricultural laborer with a laborer's identification card. He had been deported from the United States on three different occasions: On April 15, 1946, December 5, 1946, and last on August 5, 1947. He has testified that on October 22, 1947, he secured admission to the United States as an agricultural laborer under the name of Arturo Rodriguez-Gomez at Calexico, Calif.; that on securing this contract, he posed as Arturo Rodriguez-Gomez because this person had secured a card, presumably a clearance from the Mexican officials and passed it to him, and he continued to work in the United States under that name as a contract laborer until 1951. In 1951 he secured a contract under his own name up to the present time.

As Miguel Sandoval-Michel was deported on three occasions, he was not eligible to be admitted as a contract laborer at the time of his last entry and was excluable at that time. He did request permission to reapply after deportation which was granted by the district director on October 13, 1953. On October 23, 1953, the district director ordered this permission revoked and he then appealed to the Assistant Commissioner.

2. Miguel Sandoval-Michel was born September 17, 1927, at Union de Tula, Jalisco, Mexico.

3. He now resides with his wife and two children who are United States citizens, at Box 415, San Juan Capistrano, Calif.

I trust this is the information you desire.

Cordially yours,

JAMES B. UTT, *Member of Congress.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 2788) should be enacted.

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Calendar No. 1133

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1121

ILSE WERNER

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3626]

The Committee on the Judiciary, to which was referred the bill (H. R. 3626) for the relief of Ilse Werner, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable the fiance of a United States citizen serviceman to enter the United States for the purpose of marrying her citizen fiance and that thereafter she may reside in the United States. The bill also waives the excluding provisions of existing law relating to one who has been convicted of engaging in prostitution in behalf of the beneficiary.

STATEMENT OF FACTS

The beneficiary of the bill is a 28-year-old native and citizen of Germany who presently resides in that country. The record discloses that she was convicted on August 30, 1947, for prostitution and sentenced to 3 months' imprisonment. The beneficiary is engaged to Sgt. Vytautas Osteika, a United States citizen and a member of our Armed Forces. Sergeant Osteika met the beneficiary in 1948, while stationed abroad, and they became engaged in 1951.

A letter, with attached memorandum, dated July 20, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 8706, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 20, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 8706) for the relief of Ilse Werner, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of those files.

The bill would exempt the beneficiary from the provisions of section 212 (a) (9) of the Immigration and Nationality Act, which exclude from admission to the United States aliens convicted of crimes involving moral turpitude, and would grant the alien permanent residence if she is found to be otherwise admissible, providing that her marriage to her United States citizen fiance Sgt. Vytautas Osteika, United States Army, takes place within 3 months after its enactment.

It should be noted that the bill as drawn does not specifically exempt the beneficiary from the excluding provisions of section 212 (a) (12) of the act with respect to the beneficiary's conviction of prostitution nor does the bill limit any such exemption to grounds for exclusion of which the Department of State or the Department of Justice has knowledge prior to its enactment.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ILSE WERNER, BENEFICIARY OF H. R. 8706

Information concerning the beneficiary was furnished by Sgt. Vytautas Osteika, a citizen of the United States whose home address is 66–22 52d Avenue, Queens, N. Y.

The beneficiary, who is a native, citizen, and resident of Germany, was born on November 18, 1926. She attended elementary school in Germany, for approximately 8 years during which time it is alleged she belonged to the Hitler Youth, such membership being compulsory. The beneficiary has never been in the United States and resides with her sister and brother in Germany.

According to Sergeant Osteika, the beneficiary was arrested in Germany on August 30, 1947, for prostitution and sentenced to 3 months in prison. She served 2 months of this sentence. It is alleged that this was the beneficiary's only arrest.

Sergeant Osteika was born on October 7, 1925, in New Britain, Conn. He has 9 years of service in the United States Armed Forces, serial No. RA–12270705. He first met the beneficiary in 1948 and became engaged to her in 1951. Sergeant Osteika stated that it is his intention to marry the beneficiary upon her arrival into the United States. His assets consist of $500 cash and approximately $500 in personal effects. His present salary as a sergeant in the United States Army amounts to $175 a month.

The Director of the Visa Office, Department of State, also submitted the following report dated March 21, 1955, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, March 21, 1955.

The Honorable EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Reference is made to Mr. Reed's letter of April 7, 1954, and its enclosures, wherein a report was requested in the visa case of Ilse Werner, beneficiary of H. R. 8706, 83d Congress, 2d session.

Information has been received from the American consulate general at Frankfort, Germany, that Miss Werner was convicted in 1947 by the district court at Giessen, Germany, of vagrancy and prostitution pursuant to paragraph 361 of the German Penal Code and sentenced to imprisonment for 12 weeks. As a consequence, the responsible consular officer would have no choice under section

212 (a) (12) of the Immigration and Nationality Act but to continue to withhold the issuance of a visa to Miss Werner.

It may be added that in her visa registration form, Miss Werner listed 2 convictions, 1 for illegal border crossing and the other for not being in possession of identification papers, neither of which involves moral turpitude.

At this time the Department has no knowledge of any factor in Miss Werner's case, other than the information hereinbefore cited, which would render her ineligible to receive a visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Miss Werner from receiving a visa.

Sincerely yours,

ROLLAND WELCH
Director, Visa Office
(For the Secretary of State).

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 3626) should be enacted.

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Calendar No. 1134

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1122

UNIV. OF MICH.

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LEOPOLDINE SIMONETTI

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3856]

The Committee on the Judiciary, to which was transferred the bill (H. R. 3856) for the relief of Leopoldine Simonetti having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary is a 27-year-old native and citizen of Austria. On November 3, 1954, she was married to Salvatore Simonetti, a United States citizen veteran, who had returned to Germany following his discharge from the United States Army to marry the beneficiary. He presently resides in Germany with his wife and they have one citizen child. The record discloses that the beneficiary was convicted on February 14, 1948, for the commission of two separate offenses, namely, stealing a blouse in October 1947, and stealing a pair of shoes in December 1947. Without the waiver provided for in the bill, the beneficiary will be unable to accompany her citizen husband and child to the United States.

A letter, with attached memorandum, dated June 1, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washinbton, D. C., June 1, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to bill (H. R. 3856) for the relief of Leopoldine Simonetti, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of those files.

The bill would waive the provisions of section 212 (a) (9) of the Immigration and Nationality Act, which excludes from admission into the United States aliens convicted of crimes involving moral turpitude, and would grant the alien permanent residence if she is found to be otherwise admissible.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LEOPOLDINE SIMONETTI, BENEFICIARY OF H. R. 3856

Information concerning the beneficiary and sponsor was furnished by the latter's brother, Father Gennaro Simonetti, pastor of St. Joseph Patron Church in Brooklyn, N. Y. Both the beneficiary and sponsor are presently residing abroad.

The beneficiary, Leopoldine Simonetti, nee Fritthum, was born in Vienna, Austria, on February 25, 1928. She attended elementary school in her native city for approximately 8 years. She is presently a housewife.

The beneficiary has never been to the United States. She has no relatives in this country. Her parents, 2 brothers, and 2 sisters reside in Austria.

According to Father Simonetti, the beneficiary was convicted on February 14, 1948, in Germany for the commission of two separate offenses, namely, stealing a blouse in October 1947 and stealing a pair of shoes in December 1947. He also stated that because of this criminal record she was denied the issuance of an immigrant visa by the American consul in Munich, Germany.

The sponsor, Salvatore Simonetti, was born on October 28, 1929, in Brooklyn, New York. He is a high-school graduate. He enlisted in the United States Air Force on January 5, 1951, and was honorably discharged on October 11, 1954. He served in Germany for approximately 2½ years. During his stay in Germany, he became engaged to the beneficiary. After his discharge from the Air Force, the sponsor returned to Germany and married the beneficiary on November 3, 1954. They have one child, Sylvia, born on August 1, 1952. Mr. Simonetti is presently living with his wife and child in Erding, b/Munich, Germany, and is awaiting the beneficiary's admission to the United States. They are living off savings and periodic contributions from relatives in the United States.

Congressman Eugene J. Keogh, the author of the bill, submitted the following information in support of the bill:

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN CONSULATE GENERAL,
Munich, Germany, January 27, 1955.

Hon. EUGENE J. KEOGH,
House of Representatives, Washington, D. C.

MY DEAR MR. KEOGH: I have received your letter of January 14, 1955, concerning the immigration cases of Mrs. Leopoldine Simonetti, the wife of Mr. Salvatore Simonetti, and her daughter, Leopoldine Fritthum.

The files of this office contain an approved petition in behalf of Mrs. Simonetti executed by her husband and according her nonquota status. Her daughter, Leopoldine Fritthum, is registered on the waiting list of intending immigrants under the German quotas as of August 19, 1954. However, Mrs. Simonetti has been found inadmissible to the United States under section 212 (a) (9) of the Immigration and Nationality Act of 1952 as a person convicted of crimes involving moral turpitude; namely theft. As Mrs. Simonetti committed the offense on more than one occasion her case does not fall within the provisions of section 4 of

Public Law 770, 83d Congress, and therefore she was refused a visa on January 11, 1955, under the above-cited section of the act.

I assure you that the cases of Mrs. Simonetti and her daughter were accorded every consideration consistent with the immigration laws and regulations.

Sincerely yours,

J. RAYMOND YLITALO,
American Consul.

ST. JOSEPH, PATRON OF THE UNIVERSAL CHURCH,
Brooklyn, N. Y., June 28, 1955.

Hon. EUGENE J. KEOGH,
House of Representatives,
Washington 25, D. C.

DEAR CONGRESSMAN KEOGH: This is to verify the information contained in your letter of June 28, 1955, to Representative Celler with reference to H. R. 3856, for the relief of Leopoldine Simonetti.

The information contained in the statement enclosed with your letter was prepared by me from information which I personally obtained from the alien during my recent visit abroad.

With kind regards, I am

Sincerely yours,

The Reverend G. SIMONETTI,
Assistant Pastor.

ST. JOSEPH, PATRON OF THE UNIVERSAL CHURCH, BROOKLYN, N. Y.

Leopoldine Katharina Simonetti nee Fritthum married November 1954. Born February 28, 1928. First of five children. Born in Vienna, Austria.

Father: Leopold, born September 12, 1905, in Austria.

Mother: Maria Huber, born near Vienna, February 14, 1907.

Other children born in family (brother and sisters of Leopoldine): Second, Erich born February 12, 1931, now married; third, Herta, born April 28, 1933, now married; fourth, Helga, born January 1, 1939; fifth, Adolphina, born March 28, 1940.

Father of Leopoldine, Leopold, was drafted into Army at end of 1940. Mother left alone with five children, was forced to find work to help support children because government allowance was insufficient. Leopoldine who was 13 years old at this time being the eldest had to look after the family. This became more difficult with the scarcity of food and the constant bombings. In addition to her work the mother was obliged to perform civic duties, such as visiting local families to advise them on medical care of children and also to distribute propaganda pamphlets. All this was for the war effort, she could not refuse. The end result of all this, children were left alone, without care and direction of parents.

At the end of the war father of Leopoldine was imprisoned by the Russians because he was a Nazi. Later he was released to Americans. They in turn released him to his family. Since his home was in the Russian sector of Vienna the Russians again imprisoned him to slave labor. Two years later they sent him home because he became seriously ill. Four years of slave labor ruined his health to the extent that he is not able to do much work.

This is the background and the atmosphere in which Leopoldine was raised. Mother and father both away from the family. A destructive war going on, death and destruction ever present.

Born February 28, 1928, in Vienna, Austria. Now married as of November 1954.

Attended school from 6th to 14th year (approximately).

In 1942 Leopoldine left school to care for children because mother had to seek work since father was drafted into army.

1943: At the age of 15 she was obliged to work in a grocery store. Owner, a prominent Nazi, accused her of stealing (indefinite) in order to get rid of her, because of her refusal to greet the customers with Heil Hitler. This was a false accusation but since the owner was an influential Nazi she was charged as a juvenile delinquent and committed to a home for 3 weeks.

1944: At the age of 16 she was obliged to work in a war factory making tank treads. She stopped working here because of the hard labor and unreasonably long hours. She was arrested and tried for treason and sabotage. For this offense she was committed to a home for 2 years. She escaped and when recap-

tured she was recommitted to stay until she would be 21. She escaped anew and then joined a Red Cross unit in order to flee from the police. When the Russians took Austria she fled to Greece to avoid going home where the Russians and the police would recommit her to incarceration. In Greece she was interned in a refugee camp moving from place to place, insufficient food, and inadequate housing, as a result she contracted typhus and malaria, from which she eventually recovered.

1947: At the age of 19, the war being over, she was sent back to Austria. She did not go back to her home because this was located in the Russian sector. She settled in Gratz, Austria, because she was also ashamed to face her family since she had joined the Red Cross against her parents' wishes.

1947: Age 19, she had no identification papers, as a result she could get no employment. She was hired only when a merchant or employer would pay half the regular wages. When she was hired for work the first week's wages were retained. Since her earnings were insufficient to live and buy food, she would quit her job in order to get sufficient money (back pay) to buy food.

Changing job after job she eventually went to work for a dry-cleaning establishment in Gratz. She worked here for 2 months although only 1 week is recorded. On October 7, 1947, she took away from the establishment a woolen jacket belonging to one of the customers. She did this because she was invited to attend a wedding party and had nothing presentable to wear. She did intend to return the jacket but before she could do this she had already been reported to the police.

After this she went to the house of a friend whom she had met in Greece, a girl named Adele Arcon. Here on December 17, 1947, she exchanged a pair of sandals for a pair of shoes belonging to her friend Adele Arcon. But the stepmother of the last-named accused Leopoldine of stealing the shoes. She was so charged. When arrested on January 6, 1948, she was wearing both jacket and shoes since she had nothing else to wear. At the trial, Adele Arcon refused to support defendant's contention that shoes had been exchanged, for fear of parental reprisal. Having no help of counsel she was sentenced to 3 months, a month was deducted since this had been served while waiting trial. Sentence was imposed February 14, 1948. She was 20 years old.

Shortly after this she was also charged with having no identification at the Bezerkgericht Court in Gratz. After all this she finally decided to return home, where she stayed for 2 year, 1948–50.

1950: At the age of 22 she went to Bavaria with her brother Erich to find work there.

In May of 1950 in Munich because of no identification she was charged by the police with illegal entry. She was soon released.

In January of 1951 while working in Dachau she was again without identification and charged with illegal entry. Sentenced to 1 month in jail.

In February of 1951 she settled in Erding, Bavaria, staying with the family of a friend. Erding is a provincial town in Bavaria in which a United States Air Force base is located. Here in November of 1951 she met Salvatore B. Simonetti, a member of the United States Air Force, stationed at the aforementioned base.

In March of 1952 while en route to Stuttgart, Germany, she was taken suddenly ill and was forced to stay in a hospital in Augsburg. Here while engaged in some play with other patients in the hospital with her she broke a glass window and was obliged by the court of that city to pay damages amounting to 63 deutschemarks.

[Translation]

GRAZ, AUSTRIA, *February 14, 1948.*

In the name of the Austria Republic:

On the request of the prosecuting authority in Graz and in presence of Dr. Fuhrmann, public prosecutor, the defendant Lea Fritthum, and Anna Gruber, it has been found by the judge of the criminal court in Graz on February 14, 1948, that—

Lea Fritthum, born February 25, 1928, in Vienna, Roman Catholic, single, of unsteady residence, without profession, is guilty of theft according to paragraph 171, 176 II b of the penal code.

She took away the following goods out of the property and without the approval of the below-mentioned owners in Graz:

1. One leather jacket, value more than 50 schillings, from the Reichstamm Co., respectively Mrs. Pittermann, in November 1947;

2. One pair of shoes of unknown value from Anna Gruber, nee Arcon, on December 17, 1947.

Therefore she has been found guilty of theft according to paragraph 171, 176 II b of the penal code and will be sentenced to 2 months of hard labor and 1, more severe imprisonment per month according to paragraphs 178 and 54 of the Penal Code. She will also have to pay the costs of the criminal procedure according to paragraph 389 of the Penal Code. The imprisonment previous to the trial, from January 6, 1948, to February 2, 1948, will be deducted from the sentence according to paragraph 55 a of the Penal Code.

Reasons:

The state of the case, according to the confession of the defendant, the findings of the security authority, and the authentic statements of the witnesses Alfred Reichstamm, Annemarie Pittermann, Adele Arcon, and Anna Gruber, nee Arcon, is as follows:

The defendant returned from Greece in July 1947. She worked in a laboratory for 1 week and later, from September 29 to October 7, 1947, in the Reichstamm laundry. In the afternoon of October 7, 1947, she stopped working without giving notice. At that time, she took away a jacket of coarse woolen cloth, that had been turned in for cleaning and belonged to Annemarie Pittermann.

In December 1947, she visited Adele Arcon, whom she had met in Greece. There she stole a pair of black leather shoes from the toilet.

On January 6, 1948, the defendant was arrested. She was wearing the jacket up to that date. The shoes she was even wearing at the time of the trial. In opposition to her statement, according to which she had sold the shoes for 150 schillings, respectively exchanged against smaller shoes, it was declared by Anna Gruber that the shoes which she wore at the trial were her (Anna Gruber's) stolen shoes.

The statement of the defendant that she had "borrowed" the jacket is refuted by the fact that she quit her job without giving notice, did not make any arrangements to return the jacket, and wore it until she was arrested.

The sentence is therefore confirmed.

The commitment of two crimes and the laziness of the defendant were considered as aggravating circumstances, while extenuating circumstances were seen in her age of only 20 years, her previous blamelessness, her confession, and her willingness to make up for the damage.

In view of these circumstances it was possible to extenuate the sentence. However, it did not seem to be justified to change the hard labor to imprisonment, as the defendant showed such a strong criminal inclination by her efforts to keep the stolen shoes.

For the rest, the decisions are based on the a/m paragraphs of the Penal Code

———— ————, *Judge.*
———— ————, *Secretary.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 3856) should be enacted.

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Calendar No. 1135

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1123

UNIV. OF MICH.

AUG 1 1955

LAW LIBRARY

ELIZABETH ROTICS WHITNEY

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3956]

The Committee on the Judiciary, to which was referred the bill (H. R. 3956) for the relief of Elizabeth Rotics Whitney, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provisions of existing law relating to one who has engaged in prostitution in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 27-year-old native and citizen of Hungary. She was married on April 18, 1952, to Maynard Ennis Whitney, a United States citizen, who was then stationed abroad. The beneficiary, her citizen husband, and their citizen child presently reside in Niagara Falls, Canada. The record discloses that the beneficiary was sentenced to 19 days confinement for unlawfully entering a United States Army installation. She was arrested on three occasions for engaging in prostitution. Without the waivers provided for in the bill the beneficiary will be unable to qualify for a visa to enter the United States.

A letter, with attached memorandum, dated December 16, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 7143, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., December 16, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 7143) for the relief of Elizabeth Rotics Whitney, there is attached a memorandum concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Buffalo, N. Y., office of this Service, which has custody of these files.

The bill is intended to exempt the beneficiary from the excluding provision of section 212 (a) (12) of the Immigration and Nationality Act which relates to aliens of the immoral classes, if she is found to be otherwise admissible under the provisions of that act. It would also provide that this exemption shall apply only to a ground of exclusion of which the Department of State or the Department of Justice have knowledge prior to the enactment of this act.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ELIZABETH ROTICS WHITNEY, BENEFICIARY OF H. R. 7143

The beneficiary, Elizabeth Rotics Whitney, a native and citizen of Hungary, was born on August 13, 1927. She has never entered the United States and now resides with her husband, a native born citizen of the United States, at 863 Maple St., Niagara Falls, Ontario, Canada.

Mrs. Whitney testified that she was refused an immigrant visa by the American consul, Niagara Falls, Ontario, Canada, because of a conviction by a military court, Linz, Austria, of being a person of the immoral class. The committee may desire to request the Bureau of Security and Consular Affairs, Department of State, to secure information in this connection.

She married Maynard Ennis Whitney on April 18, 1952, and they have a daughter, Lori E. Whitney, residing with them. The husband, sponsor of the bill, served honorably in the United States Army from August 10, 1948, to May 29, 1952, and while stationed abroad met the beneficiary. He is employed as a machine operator by Kimberly-Clark Corp., Niagara Falls, N. Y., and earns $300 monthly. The family assets include personal effects and an $86 savings account.

The Director of the Visa Office, Department of State, submitted the following report dated February 26, 1954, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, February 26, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. REED: Reference is made to previous correspondence concerning the case of Mrs. Elizabeth Rotics Whitney, who is the beneficiary of H. R. 7143, 83d Congress, 2d session.

A communication has now been received from the American consulate at Niagara Falls which reports that Mrs. Whitney is the beneficiary of approved visa petition VP 04–2224, executed by her husband, Mr. Maynard Ennis Whitney, of Nelson, Pa., granting her nonquota status as the alien spouse of an American citizen. On March 19, 1953, she was informally refused an immigrant visa by the consulate at Windsor under section 212 (a) (12) of the Immigration and Nationality Act, which renders ineligible to receive visas and excludable from the United States aliens who have engaged in prostitution. This refusal was based on a report contained in an operations memorandum dated September 26, 1952, from the consulate at Salzburg, which reads as follows:

"Legal check revealed no birth date but confirmed her Hungarian citizenship. She was arrested on August 9, 1948, for unlawfully entering United States Army installation. Summary court case 4588. Tried August 27, 1948. Nineteen days confinement beginning August 9, 1948. Proper maiden name is Rotics, not Rotigs.

"The Linz police direction report that subject was first arrested on August 9, 1948, by MP under suspicion of VD. Put before military court Linz on August 24, 1948. The medical examination in this case was negative. In the continuation of times she was again arrested by MP on March 7, 1949, and August 7, 1949, under suspicion of being infected with VD. In both cases she was treated for syphilis in the clinic for women (special section) Professor Neidernhart. As can be seen from a police report ex 1949, she had no proper work while staying in Linz but lived mostly on her intercourse with American soldiers."

It is further reported that at the request of Mr. Whitney his wife's dossier was transferred from the consulate at Windsor on June 4, 1953. On June 16, 1953, the consulate at Niagara Falls, in its turn, informed Mrs. Whitney of her ineligibility to receive a visa under the above-cited section. On September 9, 1953, Mr. Whitney called at the consulate and, after having explained to the consular officer that he was aware of the grounds of his wife's refusal, stated that he would communicate with his Congressman in the matter since there appeared to be no other way for his wife to get a visa. No further action has since been taken in Mrs. Whitney's case.

At this time the Department has no knowledge of any factor in Mrs. Whitney's case, other than the information hereinbefore cited, which would render her ineligible to receive an immigrant visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Mrs. Whitney from receiving a visa.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Secretary of State).

Congressman Alvin R. Bush, the author of the bill, submitted the following information in connection with the case:

ST. PATRICK'S RECTORY,
Niagara Falls, Ontario, February 3, 1955.

To Whom It May Concern:

This is to certify that Mrs. Meinard (Elizabeth) Whitney is known to me as a member of this parish in good standing. I know her to be of good character and ask your kind consideration of her request to join her husband, an American citizen employed in the United States.

Rev. CLAUDE J. ENGEMANN, O. Carm.

ROBINSON UNITED CHURCH,
London, Ontario, January 2, 1955.

To Whom It May Concern:

This is to certify that I, the Reverend E. R. Stanway, minister of Ribinson United Church, London, Ontario, performed the marriage of Mr. Maynard Whitney of Nelson, Pa., United States of America, and Miss Elizabeth Rotics, resident, at that time of London, Ontario.

I believe that Mrs. Maynard Whitney is a person of good character and would prove herself to be a good citizen of the United States of America.

Yours sincerely,

Rev. E. R. STANWAY.

ROBINSON UNITED CHURCH,
London, Ontario, January 2, 1955.

DEAR MRS. WHITNEY: I was sorry to hear that you have not yet been able to gain your entrance into the United States of America. I am sending you a letter of recommendation and hope that very soon all will be well with you and your husband.

Give my best wishes to your husband and to all his people when you see them again.

May God's richest blessing rest upon you all.

Yours sincerely,

Rev. E. R. STANWAY.

NIAGARA FALLS, ONTARIO, *February 4, 1955.*

Re Mrs. Maynard Whitney (Elizabeth).

Mr. BUSH,
Congressman from Pennsylvania.

DEAR MR. BUSH: The above-named is a patient of mine and she is desirous of entering the United States to become an American citizen.

I have known Mrs. Whitney personally for the past 2 years and was her obstetrician when she had her first child. I know her as a very excellent patient and a very competent mother and good wife and I certainly would consider her an excellent candidate for a citizen of your country. I feel that you may be assured that she is well educated and a capable woman in all respects.

Yours very truly,

D. R. JOHNSTON, M. D., C. M.

F. W. WOOLWORTH CO., LTD.,
London, Ontario, February 1, 1955.

To Whom It May Concern:

Mrs. Elizabeth Whitney was in our employ from September 1952 to May 1953. During this time we found her to be trustworthy.

She left of her own accord.

Yours truly,

C. W. GRINDELL, *Manager.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 3956) should be enacted.

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Calendar No. 1136

84TH CONGRESS
1st Session

SENATE

REPORT
No. 1124

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EDELTRAUDT MARGOT GALLAGHER, NEE HACKELBERG

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4970]

The Committee on the Judiciary, to which was referred the bill (H. R. 4970) for the relief of Edeltraudt Margot Gallagher, nee Hackelberg, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provisions of existing law relating to one who has been convicted for prostitution in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 23-year-old native and citizen of Germany who presently resides in that country. She was married on February 17, 1955, to Sgt. Albert Joseph Gallagher, a United States citizen and member of our Armed Forces, who met the beneficiary while stationed abroad with our Armed Forces. The beneficiary has a child born out of wedlock, and Sergeant Gallagher plans to adopt her. The record discloses that the beneficiary was convicted on March 4, 1952, of prostitution, and without the waiver provided for in the bill, the beneficiary will be unable to join her citizen hisband in this country.

A letter, with attached memorandum, dated June 7, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., June 7, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H. R. 4970) for the relief of Edeltraudt Margot Hackelberg, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Boston, Mass., office of this Service which has custody of those files. According to the records of this Service the correct name of the beneficiary is Edeltraudt Margot Gallagher.

The bill provides that notwithstanding the provisions of section 212 (a) (9) and (12) of the Immigration and Nationality Act, the alien may be admitted to the United States for permanent residence if she is found to be otherwise admissible under the act. It further provides that this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to enactment.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE EDELTRAUDT MARGOT HACKELBERG, BENEFICIARY OF H. R. 4970

Information concerning the beneficiary who has never been in the United States and whose name is Edeltraudt Margot Gallagher nee Hackelberg was furnished by her sponsor husband, Sgt. Albert Joseph Gallagher, and his maternal grandmother, Mrs. Elinore Cole.

The beneficiary is a native and citizen of Germany who was born on January 29, 1932, in Gross-Lenkeningken, East Prussia. Her only marriage was to Sgt. Albert Joseph Gallagher on February 17, 1955, at Passau, Germany. She has a child who was born in Germany out of wedlock and whose date of birth is unknown to this Service. The child is alleged to be 5 years of age and was given the name of Margot Edeltraudt Hackelberg at birth. The child's name was legally changed to Margot Edeltraudt Gallagher after her mother's marriage. Mrs. Gallagher and her child reside at Kupuziner Strausse 73, Passau, Germany, with her mother, Mrs. Minna Augusta Hackelberg, who is the beneficiary's only other relative. The beneficiary received 8 years of schooling and is unemployed. Prior to marriage she worked as a helper to a bookbinder and as a domestic in Passau where she has made her home since 1945. She resided in her birthplace until the Russian occupation of East Germany and then fled to the American Zone of Germany where she took up residence in the city where she now lives. Her only relative in this country is her husband.

The only evidence this Service was able to learn about the beneficiary's inadmissibility to the United States was that she is alleged to have been convicted in Bamberg, Germany, on March 4, 1952, of prostitution. The committee may wish to request the Bureau of Security and Consular Affairs, Department of State, to secure information in this connection.

The sponsor husband is a native and citizen of the United States who was born on August 3, 1930, in Boston, Mass. He is presently a sergeant in the United States Army, stationed at Fort Meade, Md. After graduating from high school, he entered the United States Army in December 1948 and served until November, 1954. It was while serving with the Army in Germany from October 1949 to April 1954 that he first met the beneficiary and this was in April 1953. After being honorably discharged from the Army in November 1954, the sponsor husband returned to Germany on December 23, 1954, to marry the beneficiary. After their marriage they lived together until he returned to the United States on March 10, 1955. He then reenlisted in the Army and presently, with allowances, receives about $240 per month of which $137.10 a month is sent to his wife.

Sergeant Gallagher was aware that his wife had a child prior to their marriage who is no relation to him. He had this child's name legally changed and wishes to adopt her if his wife is able to join him in this country. The sponsor was also aware of the beneficiary's difficulty in Bamberg on March 4, 1952, but believed this was not a serious matter although he is now aware that it is apparently the

cause of his wife being unable to join him. A petition by the sponsor husband was approved by this Service on April 27, 1955, granting nonquota status to the beneficiary. His only relative in this country is the maternal grandmother mentioned above who resides at 998 Dorchester Avenue, Boston, Mass. The sergeant's father is deceased and his mother who is now married to a member of the United States Army resides in Germany with her husband.

The beneficiary's husband and his maternal grandmother are the persons primarily interested in the private bill.

Congressman John McCormack, the author of the bill, submitted the following documents in support of the bill:

[Translation]

CERTIFICATE OF MARRIAGE

In the year one thousand nine hundred and fifty-five on the 17th day of February, marriage was performed according to Roman Catholic rite at the St. Gertrude's Church, Passau-Innstadt, between: Albert Joseph Gallagher, Roman Catholic, of Boston, Mass., born at Boston, on August 3, 1930, legitimate son to Albert Gallagher, constructional engineer, deceased, and Kathleen, nee Cole, and Edeltraud Hackelberg, Roman Catholic, of Passau-Innstadt, born at Gross-Lenkeningken on January 29, 1932, legitimate daughter to Richard Hackelberg, deceased, and Minna, nee Ksionsek.

This is testified in accordance with the local register of marriages, volume 1947, page 80, No. 1, kept for the year 1955.

[SEAL] CATHOLIC PARISH OFFICE OF ST. SEVERIN,
SCHAFNIZL, *Parish Priest.*

PASSAU, *February 25, 1955.*

The correctness of the translation is confirmed.

[SEAL] RUDOLF GSTÖETTNER,
Officially Sworn Interpreter of the English Language at the Provincial Court at Passau, Germany.

PASSAU, *February 26, 1955.*

[Translation]

Dr. FRANZ GUTZEIT,
Passau, January 20, 1955.

CONFIRMATION

Miss Edeltraud Hackelberg, of 73 Kapuzinerstrasse, Passau-Innstadt, was sentenced to 2 months' imprisonment and to a committal for 4 weeks by judicial order of March 4, 1952, giving as a reason that she grossly neglected her obligation to care for her child in a conscientious way, as it is demanded in section 170 German Penal Code, whereby she had endangered the welfare of her child, and that she had exercised professional prostitution with soldiers of the United States occupation forces at Schesslitz, a community with less than 20,000 inhabitants.

The actual fact was, that at that time Miss Hackelberg had already known her present fiance, Mr. Gallagher who, however, at that time was not willing to promise marriage to her because of his youth, and that Miss Hackelberg, therefore, followed another member of the United States occupation forces, who promised to marry her. By the latter, Miss Hackelberg had been lodged for a time at Schesslitz in an inn, and then for some time in a hotel at Bamberg.

The criminal procedure against Miss Hackelberg had been instituted according to an express letter of her mother of February 4, 1952, directed to the criminal police at Bamberg, asking them kindly to send her daughter back to her. In this letter Miss Hackelberg's mother described the matter in a way that Miss Hackelberg had left her child in the lurch. Then, there followed still another letter of Miss Hackelberg's mother and, at last, a telephone call with the city police office at Bamberg, by which Miss Hackelberg's mother requested them again to send her daughter back to her. By this way, it was mentioned also that Miss Hackelberg's child had fallen sick and that there were not even the necessaries for the child's living and support at hand.

The penal records give no actual proof of the supposition that Miss Hackelberg had her expenses paid by any other members of the occupation forces and that Miss Hackelberg had exercised professional prostitution in fact.

Miss Hackelberg's statement, on the contrary; namely, that in the hotel where she had been lodged it was strictly looked for that everything was in order and that no member of the United States occupation forces entered the hotel, is a statement which appears fully trustworthy.

Miss Hackelberg had sent a letter from Bamberg to her mother on February 4, 1952, and hence it follows also that Miss Hackelberg had not led a vagrant life with different members of the occupation forces or any other man or that she even had exercised professional prostitution, but that she had at that time joined one certain member of the occupation forces only, who took her with him from Passau and who intended to marry her. Above all, this letter—which sorrily had not been presented at the then criminal procedure—discloses absolutely that Miss Hackelberg had in no case neglected her child's support, welfare, and care, in a way liable to punishment, for she mentions in this letter that she is "including 30 deutschemarks for the child," giving her, in a loving way, the pet name "little Duckie (Mousie)," and at that time she also asked her mother in this letter to put the child out to board with a certain Mrs. Enzenshofer. Of the fact that the child had fallen ill, Miss Hackelberg had been informed only some time later. Besides, she still had sent further money to her mother, as it was confirmed to me personally by her mother.

The whole criminal procedure with its unhappy result may obviously be brought back to the circumstance that, in her fully understood anxiety for her daughter, Miss Hackelberg's mother had made statements to the police which did not agree with the real facts. She had, however, made these statements with intention, only to make her daughter come back to her, but not to cause a punishment against her daughter. Sorrily, her troubles took a contrary turn.

As far as I know the personal circumstances and relations of the Hackelberg family, who are refugees, it is my true impression that Miss Hackelberg is not the person to commit offenses as they have been the subject of the judicial order, and I am sure that, if the criminal case had not been carried out by a judicial order but according to a trial and judicial evidence, the punishment in question would never have taken place, and that so much the more, when the letter of February 4, 1952, had been presented to the court and when Miss Hackelberg's mother would have been heard as witness.

GUTZEIT, *Lawyer.*

The correctness of the translation is confirmed.

[SEAL] RUDOLF GSTÖETTNER,
Officially Sworn Interpreter of the English Language at the Provincial Court at Passau.

PASSAU, *January 22, 1955.*

[Translation]

DR. FRANZ GUTZEIT,
Passau, October 22, 1953.

Re Edeltraudt Hackelberg, Because of Violation of the Guardian's Duty To Care for a Child, etc., –Cs 1763 a–b/52.

To the District Court, Bamberg.

In this said case I hereby lodge an immediate complaint against the decision of the district court of Bamberg dated October 12, 1953, served to me on October 16, 1953, applying for a new trial by reversing the decision contested.

REASONS

(I). As for the offense against section 170d of German Penal Code, the letter filed to this court does not only prove that the condemned person had sent home an amount of 30 deutschemarks for her child, but also that she advised her mother to bring the child to Mrs. Enzenshofer for a while. In fact—as the mother of the condemned person declared to the undersigned—the child was not put out to board with Mrs. Enzenshofer, it is true, but with a neighbouring woman, who fully cared for the child and that, too, when the child fell sick with bronchitis.

It is also worth to be stated that in the letter submitted to this court, the condemned person is speaking of the child as Mousie and that in the connection that she would send the money for the child and that she gave the advice to give the child out for care. In these circumstances there cannot be seen in anyway that even the facts of section 170d German Penal Code would be accomplished, i. e., that the condemned person would have grossly neglected her duties for the child's care and education and that "in an unscrupulous way."

The condemned person furthermore wants to declare that she had heard of the child's sickness at the day only when she was arrested in Bamberg, and that by a letter, which her mother had written to her through another soldier of the occupation forces, who informed her thereabout just the day when she was arrested. Therefore, the condemned person was no more in the position to return home because of her child's sickness still before undergoing her term of imprisonment.

It is not to be overlooked that, in its essentiality, the sentence took place according to the then steps and measures adopted by the mother of said condemned person, who has repeatedly declared now to the undersigned that, at that time, she had acted so only because of her partly being anxious about her daughter, partly influenced on the other side by the repeated visits of a soldier of the United States occupation forces named "Al" (as he is called in said letter), the present fiance of said condemned person, so that she had stated the whole issue in a way not conforming with the real facts.

(II). As to the alleged professional prostitution it may be seen from the records that the condemned person had lived at that time partly in an inn at Schesslitz, partly in the hotel Zur Post at Bamberg. In both cases she was lodged there by that soldier of the occupation forces, who had fetched her from Passau and who, at that time, intended to marry her, and he also covered the costs for the lodging of said condemned person. There is no evidence in the records that the condemned person would have get her expenses paid by other occupation forces personnel. Above that, the condemned person explains that there was a strict control and supervision in the said hotel Zur Post and that there was no American soldier permitted to enter this hotel.

EVIDENCE

Statement of the owner of said hotel "Zur Post", Bamberg.

Resuming all particulars mentioned above, the preliminary conditions for a new trial should be given. Reference is once again made to the circumstances that the present fiance and former friend of the condemned person is positively intending to marry her and to take her with him to the United States. That is, however, impossible for him as long as his fiance's previous conviction is not reversed.

I include a form of the Foreign Service of the U. S. A., which has been sent over to the condemned person and her fiance when applying for a visa for said condemned person.

Dr. GUTZEIT, *Lawyer.*

The correctness of the translation is confirmed.

[SEAL] RUDOLPH GSTOETTNER,
Officially Sworn Interpreter of the English Language at the Provincial Court at Passau, Germany.

PASSAU, *June 9, 1954.*

The committee, after consideration of all the facts in the case is of the opinion that the bill (H. R. 4970) should be enacted.

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Calendar No. 1137

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1125

FLORENCE E. McCONNELL

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5080]

The Committee on the Judiciary, to which was referred the bill (H. R. 5080) for the relief of Florence E. McConnell, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay the sum of $4,370.76 to Mrs. Florence E. McConnell, the widow of P. H. McConnell, of Fort Peck, Mont., in full settlement of the claims which her late husband had against the United States for work performed by him under contract No. W–631–eng–2373, dated May 14, 1940.

STATEMENT

A similar bill was introduced and passed the Senate in the last Congress but did not pass the House prior to adjournment.

On May 14, 1940, P. H. McConnell entered into a contract with the United States Government whereby Mr. McConnell was to deliver sand and coarse aggregate to the Army engineers at Fort Peck, Mont.

Mr. McConnell was given notice to proceed and did proceed under the contract. Later he failed to meet the delivery schedules, allegedly because of a breach of warranty by his supplier. On September 24, 1940, Mr. McConnell advised the United States Engineers office that he did not contemplate further prosecution of the contract. The Government thereupon entered into another contract to obtain sand and aggregate. The total cost to the Government of subsequently procuring and stockpiling this sand and gravel was $143,347.46. If

claimant's husband had delivered the material, the cost to the Government would have been $113,133.08.

Of the difference between these two amounts, $20,477.95 was expended for stockpiling this material.

On February 13, 1941, the United States Government made demand on the United States Fidelity & Guaranty Co., a surety under the performance bond of this claimant. The surety, on about March 26, 1941, offered to settle for $20,000 and consented so far as the surety was concerned to the retention by the Government of $4,370.76, which was the amount due Mr. McConnell for work performed prior to default. Mr. McConnell was not a party to the settlement between the surety company and the United States and was not informed of its terms. On December 27, 1941, the Government accepted the surety's offer of $20,000 in compromise of the Government's claim. On July 27, 1943, the Government through the General Accounting Office made demand on Mr. McConnell for the payments of excess costs, $32,259.02 less the $20,000 paid by the surety, and the $4,370.76 withheld. When this was not forthcoming, the Government on December 17, 1946, sued Mr. McConnell for alleged excess costs in the amount of $32,259.02. Thereafter, on January 18, 1951, Mr. McConnell, as the result of a compromise in the litigation involving his supplier of the sand aggregate, paid the surety $11,125 in full release of any obligation arising out of prior payment out of surety to the Government.

On June 30, 1952, the United States District Court for the District of Montana, in a case of *U. S.* v. *McConnell*, entered judgment for McConnell holding that he had not contracted to pay costs of stockpiling, that excess costs due the Government, therefore, totaled only $11,215.40, and that the Government had been more than compensated by the $20,000 paid in compromise by the surety and the $4,370.76 withheld from McConnell.

Following termination of this litigation, Mr. McConnell filed a claim for the moneys withheld from him under the contract. The General Accounting Office dismissed this claim on October 2, 1952. By this time, Mr. McConnell was unable to file suit for the $4,370.76 due him because of the expiration of the 6-year period provided in the applicable statute of limitation (28 U. S. C. 2401).

The committee believes that this legislation should be approved.

The money which the Government holds originally was due and owing to Mr. McConnell and withheld solely as an offset against the losses of the Government. As a result of the decision of the United States District Court, it is now clear that the Government has received money in excess of the damage occasioned by the default under this contract. Consequently, no valid reason appears for denying remuneration for labor and materials furnished by claimant's husband. The committee therefore recommends favorable consideration of this bill.

The committee has allowed the conventional 10 percent attorney's fee in this bill after receiving (1) an affidavit from the attorney involved, outlining the services performed in connection with this bill, and (2) a letter from the sponsor recommending allowance of the fee.

Attached to this report is memorandum opinion of the United States District Court of the District of Montana in the case of *U. S.* v. *McConnell,* the findings of fact and conclusions of law in that case,

and a copy of the release of P. H. McConnell by the surety company, dated January 18, 1951, and the report of the Department of the Army dated May 5, 1955.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, HAVRE DIVISION

Memorandum No. 898

UNITED STATES OF AMERICA, PLAINTIFF, *v.* P. H. McCONNELL, DEFENDANT

The first matter to be decided in this case is whether or not the decision of the Chief of Engineers that McConnell was required by his contract to stockpile the sand and gravel which he furnished to the Government is conclusive upon the parties by virtue of the provisions of article 12 of the contract and paragraph 14 of the specifications, and whether or not the court, by reason of such provisions, is precluded from considering the question.

The dispute between McConnell and the Government regarding whether or not McConnell was required by the contract to stockpile the material involves an interpretation of the contract, rather than a question of fact (*U. S.* v. *Lundstrum*, 139 Fed. (2d) 792 (C. C. A. 9).

Plaintiff in its brief cites and relies upon four cases in support of the proposition that the decision of the Chief of Engineers is conclusive on the parties, and that the court may not consider such question.

The case of *United States* v. *Moorman* (338 U. S. 457) is clearly distinguishable from the present case. In the present case, article 12 of McConnell's contract provides as follows:

"DISPUTES.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer, subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the contractor shall diligently proceed with performance."

And paragraph 14 of the specifications provides as follows:

"PROTESTS AND APPEALS.—The Chief of Engineers has been designated by the Secretary of War as his duly authorized representative to make final decision and to take other action where the terms of the contract require that such decision or action shall be 'by the head of the department concerned or his duly authorized representative.' If the contractor considers any work required of him to be outside the requirements of the contract, or if he considers unfair any action or ruling of the inspectors or contracting officer, he shall ask for written instructions or decision from the contracting officer immediately. Any protest based upon such instruction or decision, or claim otherwise arising under the contract, including a request for extension of time under article 5 (Delays—Damages), shall be submitted to the contracting officer within the period specified in the contract. If the contractor is not satisfied with the ruling of the contracting officer, he may, where so provided in the contract, make written appeal to the Chief of Engineers. Such appeals, containing all the facts and circumstances upon which the contractor bases his claim for relief, shall be addressed to the Chief of Engineers, United States Army, and presented to the contracting officer for transmittal within the time provided therefor in the contract."

It will be noted that by article 12, the decision of the head of the department is made final and conclusive upon the parties on disputes "concerning questions of fact." There is no similar provision making the decision of the head of the department final and conclusive on the parties in paragraph 14 of the specifications, which paragraph deals with protests and appeals concerning interpretations of the contract with reference to the scope of the work required by contract, and therein lies the difference between this case and the Moorman case. Article 15 of the contract in the Moorman case is identical with article 12 in McConnell's contract, but paragraph 2–12 of the specification in the Moorman case, which corresponds to paragraph 14 of the specifications in McConnell's case, is broader than the corresponding paragraph in McConnell's contract, and specifically makes the decision of the head of the department conclusive on the parties with regard to the scope of the work required by the contract. The court in the Moorman case held in effect that, regardless of whether the dispute involved there was one concerning a question of fact or whether it was one involving an

interpretation of the contract, it was covered by one or the other of the provisions and the Court of Claims could not decide the dispute. The court in the Moorman case said, "It is true that the intention of parties to submit their contractual disputes to final determination outside the courts should be made manifest by plain language." There is no plain language, nor any language at all in the McConnell contract manifesting an intention of the parties to submit their contractual disputes, other than those involving questions of fact, to final determination outside the courts and as previously noted, the dispute here involved between McConnell and the Government concerns an interpretation of the contract, rather than a question of fact.

The case of *U. S.* v. *Wunderlich* (342 U. S. 98) involved only what the parties agreed was a dispute of fact, and it was therefore controlled by a provision of the contract identical with article 12 of McConnell's contract above set forth.

Neither the Wunderlich case nor the other two cases cited on this question by plaintiff are in point here. All of the cases cited by plaintiff in its brief stand for the proposition that parties to a contract may make any agreement they wish with respect to the final settlement outside of court of questions arising under the contract. However, as the Supreme Court said in *Mercantile Trust Co.* v. *Hensey* (205 U. S. 298), "To make such a certificate (or decision in this case) conclusive requires plain language in the contract. It is not to be presumed" (citing cases).

The Court of Appeals for the Ninth Circuit, in the case of *U. S.* v. *Lundstrom* (139 Fed. (2d) 792 at 795), had this to say regarding a provision in a contract identical with article 12 in McConnell's contract, above set out:

"It is the position of the Government that this provision covers the dispute over the description of the materials to be hauled, that it was the duty of the Lundstroms to follow the procedure therein, and that the district court was without jurisdiction of the subject matter. But, if this were true, the very untenable and paradoxical situation would be present that the Government, one of the parties to the contract, would have the decision as to the meaning and extent of its contract. *Provisions such as here under consideration do not relate at all to the interpretation of the contract.* Issues so arising are strictly issues of law and are for the courts to determine." [Italics supplied.]

The court having decided that it has jurisdiction to interpret the contract, now must determine whether or not, under the terms of the contract, McConnell was required to stockpile the material furnished.

Paragraph 1 (b) of the specifications contained in the invitiation to bidders provides:

"(b) Schedule I provides for delivery of the coarse aggregate and sand to stockpiles at Fort Peck, Mont., etc."

Paragraph 5 (e) of the same specifications provides:

"(e) When award is made on the basis of truck deliveries to stockpiles at Fort Peck, Mont., delivery shall be made to stockpiles at locations designated by the contracting officer."

The controversy as to whether or not stockpiling was required under the terms of the invitation to bid and specifications arose before the award of the contract to McConnell. After the bids were opened, and before award of the contract to McConnell, discussions were had between McConnell and the Army engineers as to this requirement. In these discussions McConnell was advised that the specifications were written with the intent to require stockpiling, and that his bid would be rejected unless he included stockpiling. McConnell replied that he wanted the contract under the terms set forth in the specifications, and the contract was awarded to him in accordance with those specifications, with no change in the above-quoted provisions. Article 1 of the contract provides:

"ARTICLE 1. SCOPE OF THIS CONTRACT.—The contractor shall furnish and deliver by truck to stockpiles at Fort Peck, Mont., in accordance with the requirements of schedule I of the specifications, etc."

Thereafter, McConnell, under the provisions of paragraph 14 of the specifications hereinbefore set out, requested instructions or decision from the district engineer on the question of whether or not he was required to stockpile, and upon being informed by the district engineer that he was required to stockpile, he appealed the decision to the Chief of Engineers at Washington, who sustained the district engineer.

The only basis upon which the Government seeks to impose the requirement of stockpiling on McConnell is informal oral discussions had between McConnell and the Army engineers prior to the award of the contract to McConnell, but it

is a basic principle of contract law that when a contract is reduced to writing, and the written instrument is clear and unambiguous, all of the prior negotiations are merged in the writing, and it is from the writing alone that the intention of the parties must be determined (17 C. J. S. Contracts, sec. 332, p. 750; *Simpson Bros.* v. *District of Columbia*, 179 Fed. (2d) 430; *Golden Gate Bridge & Highway Dist.* v. *U. S.*, 125 Fed. (2d) 872).

The court is unable to find any ambiguity in the written contract between McConnell and the Government which would permit the court to go behind the written instrument and consider the negotiations between McConnell and the Army leading up to the execution of the contract.

"A contract is ambiguous if, and only if, it is reasonably or fairly susceptible of different constructions; it is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of language in general its meaning depends. Contracts are not rendered ambiguous by the mere fact that the parties do not agree upon their proper construction" (citing cases) (*Whiting Stoker Co.* v. *Chicago Stoker Corporation*, 171 Fed. (2d) 248).

The words "deliver to stockpiles" in McConnell's contract cannot fairly or reasonably be construed to require McConnell to stockpile the material.

It, therefore, appears that by the terms of the contract McConnell was not required to stockpile the material furnished and the item of $20,477.95 included in the Government's statement of excess cost for that work is not properly chargeable to McConnell. Deducting that amount from the excess cost to the Government in getting the contract performed after McConnell's default, we find that the excess cost chargeable to McConnell, and for which he was liable, amounts to only $11,215.40. The Government received $20,000 from McConnell's surety, and retained some $4,000 which became due to McConnell before his default, so it has been more than paid for the excess cost of getting the contract performed for which McConnell was liable.

In addition to all of the foregoing the court finds that the sum of $20,000, paid by McConnell's surety to the Government, was accepted by the Government, not as a partial payment, but as a compromise settlement of its entire claim for excess costs. The letter of January 7, 1942, from the administrative assistant to the Secretary of Treasury to the Secretary of War, in which the latter was advised of the acceptance of the offer (p. R–10 of exhibit 12), can be interpreted in no other way. The last 2 paragraphs of that letter are as follows:

"This offer in compromise is in satisfaction only of the War Department's claim for the excess cost of completing the defaulted contract. The Department of Labor has asserted a claim against the original contractor and his surety, arising out of alleged violations of the representations and stipulations of the defaulted contract and the Walsh-Healey Public Contracts Act. The offer in compromise expressly leaves unaffected the matter of any additional liability predicated on the Walsh-Healey Act.

"The offer was duly accepted by the Acting Secretary of the Treasury on December 27, 1941. It would be appreciated if you would advise this Department as to what account the amount offered in compromise should be credited." [Italics supplied.]

This letter, together with all the circumstances existing at the time the offer of compromise was accepted indicate the Government was compromising its entire claim for excess costs, not just releasing the surety. At the time the offer was made by the surety, McConnell was absolutely insolvent, and the Government was so advised on two occasions, at least, in letters from McConnell's attorney (exhibit 12, p. R–17; exhibit 12, p. R–7). On the other hand, the bond which McConnell had furnished upon being awarded the contract was in the sum of $50,000 and his surety, which was financially solvent, was bound to pay the excess costs up to that amount. Thus, the Government had two parties who were jointly and severally liable to it, according to its claim, in the amount of $31,693.35, one of the parties solvent and fully capable of paying the whole amount, and legally bound to do so, and the other party insolvent and unable to pay the amount or any part thereof. Under such circumstances it is not reasonable to believe that the Government would accept $20,000 from the solvent party, and release it from all liability, while at the same time retaining its claim against the insolvent party for the balance knowing that the insolvent party was unable to pay the balance or any part thereof. Any Government official under these circumstances, who released the solvent debtor, as distinguished from compromising

the claim, would be remiss in his duties, and the court refuses to accept such a proposition. All of the circumstances indicate a compromise by the Government of its entire claim for excess costs, and the court so finds.

W. D. MURRAY,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, HAVRE DIVISION

Findings of Fact and Conclusions of Law. No. 898

UNITED STATES OF AMERICA, PLAINTIFF, *v.* P. H. McCONNELL, DEFENDANT

On February 11, 1952, at Havre, Mont., it was agreed by the parties that the above-entitled cause be submitted to the court on agreed statement of facts and documentary evidence, and within the time granted by the court, each of the parties filed their briefs and proposed findings of fact and conclusions of law, and the cause was then submitted to the court for its consideration and decision, and the court, having considered the agreed statement of facts and the briefs of counsel, and being fully advised in the premises, now makes and orders filed its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

I

That on March 13, 1940, the United States Engineers at Fort Peck, Mont., issued an invitation for bids designated 631–40–142 to supply the Government with a quantity of sand and coarse aggregate for use in certain construction work at the Fort Peck powerhouse; the invitation contemplated either rail or truck delivery and specified—

"1. *Work to be done.*—(*a*) The work to be done under these specifications consists in furnishing and delivering the quantities of coarse aggregate and sand provided herein. These materials are to be used in concrete construction work at the powerplant buildings of the Fort Peck power project. These specifications shall apply to the work, whether the work is performed under schedule I, schedule II, or schedule III.

"(*b*) Schedule I provides for delivery of the coarse aggregate and sand to stockpiles at Fort Peck, Mont., the exact location to be designated by the contracting officer.

* * * * * * *

"5. (*e*) When award is made on the basis of truck deliveries to stockpiles at Fort Peck, Mont., delivery shall be made to stockpiles at locations designated by the contracting officer.";

that pursuant to said invitation the defendant P. H. McConnell submitted a bid to supply the necessary sand and gravel by truck delivery; that the bids were opened and canvassed on April 2, 1940, and the defendant P. H. McConnell determined to be the low bidder.

II

That prior to the actual awarding of the contract on the bid of the defendant P. H. McConnell a controversy arose between the United States Army Engineers at Fort Peck and the defendant with respect to the obligation of a contractor making truck delivery of the sand and aggregate called for in the invitation to place the sand and aggregate in stockpiles at locations designated by the Army engineers, as distinguished from delivery to the stockpile site; that said controversy was never resolved and no agreement arrived at between the parties with respect thereto; that thereafter the contract was awarded to the defendant P. H. McConnell and the written contract No. W–631–eng.–2373 was made and entered into by and between the Government and P. H. McConnell on May 14, 1940 and that said contract so far as pertinent to the issues here provided:

"ARTICLE 1. SCOPE OF THIS CONTRACT.—The contractor shall furnish and deliver by truck to stockpiles at Fort Peck, Mont., in accordance with the requirements of schedule I of the specifications: (describing materials and quantities) * * *.

"ARTICLE 12. DISPUTES.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer, subject to written appeal by the contractor

within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the contractor shall diligently proceed with performance."

That paragraph 14 of the specifications attached to said contract provided as follows:

"14. *Protests and appeals.*—The Chief of Engineers has been designated by the Secretary of War as his duly authorized representative to make final decision and to take other action where the terms of the contract require that such decision or action shall be 'by the head of the department concerned or his duly authorized representative.' If the contractor considers any work required of him to be outside the requirements of the contract, or if he considers unfair any action or ruling of the inspectors or contracting officer, he shall ask for written instructions or decision from the contracting officer immediately. Any protest based upon such instruction or decision, or claim otherwise arising under the contract, including a request for extension of time under article 5 (Delays—Damages), shall be submitted to the contracting officer within the period specified in the contract. If the contractor is not satisfied with the ruling of the contracting officer, he may, where so provided in the contract, make written appeal to the Chief of Engineers. Such appeals, containing all the facts and circumstances upon which the contractor bases his claim for relief, shall be addressed to the Chief of Engineers, United States Army, and presented to the contracting officer for transmittal within the time provided therefor in the contract."

That P. H. McConnell furnished the required performance bond executed by the United States Fidelity & Guaranty Co. as surety in the penal sum of $50,000; was given notice to proceed under the contract on June 4, 1940, and did proceed; that the contract was modified in writing in respects not material here; that P. H. McConnell failed to meet his delivery schedules and the delivery schedules were revised; that during the month of September 1940, the United States Army engineers took steps to terminate the contract and on September 24, 1940, the defendant advised the United States Engineers' Office that he did not contemplate continuing further prosecution of the contract.

III

That after said contract was executed and on or about June 8, 1940, the contracting officer representing the Government orally advised the defendant that he would be required to place the sand and aggregate covered by his contract in stockpiles; that thereupon the defendant P. H. McConnell wrote to the contracting officer formally protesting such requirement and thereupon the contracting officer directed defendant to place the material in stockpiles and advised that if defendant considered such decision to be outside the requirements of his contract he should file protest under paragraph 14 of the specifications and article 12 of the contract.

IV

That defendant did protest the stockpiling requirement and throughout the administrative proceeding insisted that the invitation, contract, and specifications should not be interpreted to require stockpiling as distinguished from delivery to the stockpile site; that said protest was sustained by the division engineer at Omaha, but was denied by the Chief of Engineers in Washington, D. C., on August 10, 1940, on the theory that by the oral negotiations subsequent to the opening of the bids, but prior to the execution of the written contract, defendant was "estopped from denying the district engineer's interpretation"; that the defendant did fully pursue and exhaust his administrative remedy.

V

That the contract and specifications here contained no provision making the determination of the Chief of Engineers or other administrative officer conclusive on all disputes or any dispute other than "disputes concerning questions of fact" arising under the contract.

VI

That during the month of September 1940, it became and was necessary for the Army engineers, acting for and on behalf of the United States, because of the defendant's inability to supply the sand and aggregate called for by his contract, to go upon the open market and obtain the sand and aggregate which had not been delivered by defendant; that in so doing the Government entered into a contract

to supply said sand and aggregate with the J. L. Shiely Co. for the delivery of such sand and aggregate f. o. b. its plant at Cole, Mont.; that thereafter the requisite quantities of sand and aggregate were obtained by the Government f. o. b. Cole, Mont., transported under Government bill of lading to the junction of the Fort Peck spur track owned by the United States Government with the Great Northern Railway Co. at Wiota, Mont.; thereafter switched over said Wiota spur track and transported to Fort Peck, Mont., where the cars loaded with sand and aggregate were switched on spurs and brought alongside of the stockpile locations designated by the Government engineer and the sand and gravel then raised by a clam shovel and placed in stockpiles; that the actual, reasonable, and necessary cost to the United States of so procuring and stockpiling said sand and aggregate was the sum of $143,347.46, but that of said sum $20,477.95 was expended for the purpose of actually placing the material in stockpiles and that the cost to the United States of obtaining the said sand and aggregate delivered "to stockpiles at Fort Peck, Mont., in accordance with the requirements of schedule I of the specifications" was the sum of $122,869.51 plus excess inspection costs amounting to $1,478.97 incurred by reason of defendant's default.

VII

That had defendant performed said contract the required sand and aggregate would have been delivered "to stockpiles at Fort Peck, Mont., in accordance with schedule I of the specifications" at a cost to the United States in the sum of $113,133.08, and that plaintiff was damaged by defendant's default in the sum of $9,736.43 as and for the delivered cost of the required sand and aggregate, plus said excess inspection costs in the sum of $1,478.97, making plaintiff's total loss and damage the sum of $11,215.40.

VIII

That on or about the 13th day of February 1941, demand was made upon the defendant and upon his surety, the United States Fidelity & Guaranty Co. for the full amount of plaintiff's excess cost or damage, including the cost of stockpiling; that thereafter such negotiations and proceedings were had that the said surety paid on said excess costs the sum of $20,000 and the General Accounting Office by way of setoff credited the account with the sum of $4,370.76, that being the balance owing to the defendant for sand and aggregate delivered and furnished pursuant to his contract and earned prior to the default, and that by reason of said payment made in compromise the plaintiff was more than fully compensated for all loss of damage incurred by reason of defendant's said default.

IX

That said compromise payment made as set forth in finding VIII was not made for a release of the surety only but was accepted by the plaintiff, through its duly authorized representative, in full payment and satisfaction of the plaintiff's claim.

From the foregoing findings of fact the court draws the following:

CONCLUSIONS OF LAW

I

That the court has jurisdiction over the parties and the subject matter of this action.

II

That any oral representations, contentions, or clarifications made by the parties or their representatives prior to the execution of this contact became merged in the written contract.

III

That under the written contract the defendant was not, as a matter of law, bound or required to place the sand and aggregate which he was to furnish under the contract in stockpiles or to bear the work or expense of actual stockpiling as distinguished from delivery to the stockpile site.

IV

That the interpretation of the written contract on the stockpiling issue involves a question of legal interpretation and not a question of fact within the meaning of

article 12 of the contract and that the administrative determination made by the Chief of Engineers on the stockpiling issue was not conclusive upon the defendant nor is it conclusive on this court in this action.

V

That the cost to the United States of placing the required material in stockpiles when the plaintiff completed defendant's contract is not a proper item to be charged to defendant or to be included in plaintiff's damage.

VI

That plaintiff's proper loss and damage by reason of defendant's default was paid prior to the commencement of this action.

VII

That irrespective of the amount of plaintiff's loss and damage, the full amount of plaintiff's claim was satisfied and discharged by said compromise settlement prior to the commencement of this action.

VIII

That defendant is entitled to judgment that plaintiff have nothing and dismissing plaintiff's complaint on the merits.

Let judgment be entered accordingly.

Done and dated this — day of June 1952.

W. D. MURRAY,
United States District Judge.

RELEASE

KNOW ALL MEN BY THESE PRESENTS: That the United States Fidelity and Guaranty Company, for and in consideration of the sum of Eleven Thousand One Hundred Twenty-five and no/100 ($11,125.00) Dollars, to it in hand paid by P. H. McConnell, receipt of this amount being hereby acknowledged, does hereby release, acquit, and discharge the said P. H. McConnell from any claims, demands, and causes of action of whatsoever nature which it now has or may hereafter have by reason of moneys paid out by the said United States Fidelity and Guaranty Company on behalf of the said P. H. McConnell under its performance bond No. 40096-12-181-40, said bond being given on behalf of said P. H. McConnell to the United States Government in connection with the performance of his contract No. W-631-ENG-2373, and said P. H. McConnell having defaulted on said contract requiring the said United States Fidelity and Guaranty Company to pay certain sums of money to the United States Government by reason of said default, it is the further intent of this release to release the said P. H. McConnell under the above-mentioned bond and contract and any other bond given by the said United States Fidelity and Guaranty Company to the United States Government in connection with the above-numbered contract.

Dated this 18th day of January 1951, at Baltimore, Maryland.

UNITED STATES FIDELITY AND GUARANTY COMPANY.
[SEAL] By J. D. WILLIAMS, *Vice President.*
Attest:
E. N. BUFFINGTON, *Assistant Secretary.*

DEPARTMENT OF THE ARMY,
Washington, D. C., May 5, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to S. 1134, 84th Congress, a bill for the relief of Florence E. McConnell.

The Department of the Army has no objection to the above-mentioned bill.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Florence E. McConnell, widow of P. H. McConnell, Box 1336, Fort Peck, Mon-

tana, the sum of $4,370.76, in full settlement of all claims against the United States for work performed by P. H. McConnell under contract numbered W–631–eng–2373, dated May 14, 1940."

Records of the Department of the Army show that on May 14, 1940, the War Department (now Department of the Army) entered into a contract No. W–631–eng–2373 with P. H. McConnell, doing business as the B. & M. Construction Co., Post Office Box 1876, Fort Peck, Mont., for the delivery of sand and gravel to Fort Peck, Mont. Prior to the awarding of the contract, a disagreement had arisen between Mr. McConnell and the contracting officer as to whether, under its proposed terms, the contractor would be required to place the material in stockpiles, as distinguished from mere delivery to the stockpile site. The provision in question required the contractor to "furnish and deliver by truck to stockpiles at Fort Peck, Mont., in accordance with the requirements of schedule 1 of the specifications" quantities of coarse aggregate and sand at unit prices stated with an estimated contract price of $112,000. Schedule 1 provided for delivery "to stockpiles at Fort Peck, Mont., the exact location to be designated by the contracting officer."

The contract also contained a disputes clause, providing that unless otherwise specifically provided, all disputes concerning questions of fact arising under the terms of the contract would be determined by the contracting officer subject to appeal to the head of the department concerned or his duly authorized representative, whose decision was to be final and conclusive upon the parties. Pending such decision the contractor was to proceed diligently with performance.

On June 4, 1940, after Mr. McConnell had furnished the required performance bond executed by the United States Fidelity & Guaranty Co. as surety (or guaranty) in the penal sum of $50,000, he was given notice to and did proceed under the contract. On or about June 8, 1940, he was notified orally by the contracting officer that he would be required to place the material in stockpiles. He formally protested such requirement which was confirmed in writing and his appeal therefrom was denied by the Chief of Engineers, the designated representative of the Secretary of War.

Meanwhile, Mr. McConnell failed to meet the delivery schedules provided by the contract and the delivery schedules were revised. As deliveries continued to be delinquent, in September 1940, the Government took steps toward termination of the contract for default, and, on September 24, 1940, Mr. McConnell advised that he did not contemplate further prosecution of the contract.

Accordingly, the contract was terminated for default and the Government was forced to purchase in the open market the sand and gravel which Mr. McConnell had failed to furnish. The sand and gravel was purchased f. o. b. Cole, Mont., and transported by rail under Government bill of lading to the junction of the Fort Peck spur track, owned by the Government, and the Great Northern Railway Co. track at Wiota, Mont. The cars were then switched to Fort Peck, Mont., and, on arrival there, onto spur tracks to bring them to the vicinity of the stockpile locations. They were then unloaded and the material was placed in stockpiles by the use of a clam shovel.

It was determined in the General Accounting Office that, because of the necessity of repurchasing in the open market, the Government had incurred excess costs in the total amount of $32,259.02, including the cost of stockpiling. Against these excess costs there was applied the amount of $4,370.76, which otherwise would have been due to Mr. McConnell for material furnished under the contract prior to his default. After application of this amount against the excess costs, the net amount due to the Government became $27,888.26.

Demand was made upon Mr. McConnell's surety, the United States Fidelity & Guaranty Co., for payment of the excess costs. The surety entered into negotiations with the Government directed toward compromise settlement of its liability and, by telegram dated March 27, 1941, agreed that such a settlement would take place after giving effect to the retention of the amount of $4,370.76. On December 27, 1941, the Government accepted the sum of $20,000 in settlement of the liability of the United States Fidelity & Guaranty Co. as surety.

Following termination of the contract by the Government, Mr. McConnell sued the Pioneer Engineering Works, Minneapolis, Minn., who supplied the plant equipment to produce the sand and gravel required under the contract. He recovered a judgment in the amount of $70,000 on June 30, 1950, which judgment was satisfied on November 25, 1950. From the proceeds of this judgment, Mr. McConnell paid to the United States Fidelity & Guaranty Co. the sum of $11,125, in consideration of which the latter company issued a release in full for all indebtedness of Mr. McConnell to such company arising out of the payment of $20,000, which it made in his behalf to the Government.

As a result of a communication from the General Accounting Office to the Department of Justice, the United States brought suit against Mr. McConnell for the difference between the total excess costs incurred and the amounts received from the surety and withheld under the contract totaling $24,370.76. The court determined that the question of whether or not stockpiling was required under the contract was not a question of fact but of law and that, under the terms of the contract, the contractor was not required to place the material in stockpiles or to bear the work or expense of stockpiling. The court also determined that of the total cost of repurchasing on the open market, the sum of $20,477.95 was expended for the purpose of actually placing the material in stockpiles and that, after excluding such expenditure, the actual loss and damage to the Government by reason of Mr. McConnell's default was only $11,215.40. As the Government had already received more than this amount by reason of the withholding in the amount of $4,370.76, which would otherwise have been due under the contract, and the subsequent settlement with the guaranty company, the suit was dismissed on its merits (*U. S.* v. *McConnell*, No. 898, U. S. D. C. Mont., Havre Div., June 30, 1952).

On July 7, 1952, Mr. McConnell's attorneys wrote to the Claims Division, General Accounting Office, requesting payment of the sum of $4,370.76. By decision dated October 2, 1952 (B-36744), the Comptroller General of the United States replied that—

"You contend that by reason of certain findings which the court made with respect to the amount of excess costs which had been charged against you that the Government is not entitled to retain the referred-to amount of $4,370.76, or any amount in excess of the $20,000 paid by your surety. However, your contention in the premises is entirely unwarranted by the facts in the case and the holding of the court. In paragraph VIII of the findings of fact, the court referred to the $20,000 payment made by the surety and the sum of $4,370.76 applied in partial liquidation of the excess costs by the General Accounting Office and stated that 'by reason of said payment made in compromise the plaintiff was more than fully compensated for all loss or damage incurred by reason of defendant's said default.' Also, in paragraphs VI, VII, and VIII of the court's judgment it was held that 'plaintiff's proper loss and damage by reason of defendant's default was paid prior to the commencement of this action'; that 'irrespective of the amount of plaintiff's loss and damage, the full amount of plaintiff's claim was satisfied and discharged by said compromise settlement prior to the commencement of this action'; and that 'defendant is entitled to judgment that plaintiff have nothing and dismissing plaintiff's complaint on the merits.'

"It is apparent from the language of the judgment, as quoted above, that the court did not hold that the Government was not entitled to retain the aforesaid sum of $4,370.76. The plain meaning of the judgment was simply that the Government was not entitled to recover any more from you than it already had received, or applied, in satisfaction of the excess costs incurred. Moreover, the record shows that by telegram of March 27, 1941, the United States Fidelity & Guaranty Co. agreed that the Government was to retain the amount which had been earned by you under the contract prior to default, or said sum of $4,370.76, as a part of the consideration for the settlement.

"Accordingly, the action taken by this Office in applying the amount involved toward the liquidation of your indebtedness is sustained."

This Department has been advised, under the date of July 15, 1954, that Mr. McConnell died intestate on February 26, 1953, and that no administrator had been appointed for his estate. It appears that at the time of his death he owned a small piece of land located in the State of Montana and that his other assets were negligible. He is survived by his widow, Florence Ethel McConnell, box 1876 (indicated in subject bill as Box 1336), Fort Peck, Mont., and two sons, William P. McConnell, 707 Gregg Avenue, Florence, S. C., and Clifford H. McConnell, box 1336, Fort Peck, Mont. In addition, this Department has received informal advice that all creditors of Mr. McConnell have been paid except one who made a loan on an express gamble and share of profits. Such informal advice further indicates that administration of the estate will be commenced irrespective of this claim and that the two sons will assign their interest in the estate to the widow.

The decision of the United States district court, supra, indicates that the United States has received substantially more than the actual amount of its damage as determined by the court. The settlement made by Mr. McConnell with the guaranty company has removed any interest which the latter may have in the matter. Therefore, there would appear to be no objection to payment of

the amount withheld under the involved contract to the equitable successors of Mr. McConnell in the matter. As the present bill would make the award to the equitable survivor of Mr. McConnell, the Department of the Army offers no objection to its enactment.

The cost of this bill, if approved, will be $4,370.76.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

O

Calendar No. 1138

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1126

UNIV. OF MICH.

AUG 1 1955

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SALLY S. SHULMAN OR ZELI SHOLMAN

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5767]

The Committee on the Judiciary, to which was referred the bill (H. R. 5767) for the relief of Sally S. Shulman or Zeli Sholman having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the husband of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 34-year-old native of Latvia and citizen of Israel, where he presently resides. The beneficiary is employed as a seaman and has entered the United States as a seaman on numerous occasions. The beneficiary married Hannah Koblentz on October 8, 1952 in New York, and she is a United States citizen. The beneficiary has been unable to qualify for a visa inasmuch as the record discloses that the beneficiary was convicted on July 4, 1948, of stealing, in that he invited two others to engage in the dismantling of certain pipes which were the property of another. The beneficiary was also convicted on January 4, 1952, for willfully and unlawfully causing damage to property, and on February 28, 1952, on a charge of conspiracy to commit common assault. Without the waiver provided for in the bill, the beneficiary will be unable to join his citizen wife in this country.

A letter, with attached memorandum, dated August 24, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Nat-

uralization with reference to H. R. 9400, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

AUGUST 24, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 9400) for the relief of Sally S. Shulman or Zeli Sholman, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization files relating to the beneficiary by the New York, N. Y., office of this Service, which has custody of those files.

The bill would authorize the alien's admission into the United States for permanent residence notwithstanding the provisions of section 212 (a) (9) of the Immigration and Nationality Act, which excludes from admission into the United States aliens convicted of crimes involving moral turpitude, if he is found to be otherwise admissible under the provisions of that act.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SALLY S. SHULMAN, BENEFICIARY OF H. R. 9400

Information concerning the beneficiary, Sally S. Shulman, also known as Zeli Sholman, also known as Zeli Shulman, has been furnished by his wife, Hannah Shulman (nee Koblentz), who is the sponsor of the bill.

The beneficiary, born December 6, 1932, is a native of Latvia and a citizen of Israel. He is a graduate of the Gymnasium of Riga, Latvia. In 1945, he emigrated to Israel, where he presently resides. He is employed as a seaman by the Shoham Maritime Service, Ltd., a subsidiary of Zim Israel Navigation Co. He has entered the United States as a seaman on numerous occasions. He has no relatives in any country in the world. He married the sponsor on October 8, 1952, in Brooklyn, N. Y. The consular officer in Haifa, Israel, has refused to issue him a visa on the ground that he was convicted of a crime involving moral turpitude. The sponsor stated that she was informed that on July 4, 1948, the beneficiary was convicted in Israel of the crime of theft.

The sponsor, born September 16, 1912, is a native-born United States citizen. She is a graduate of elementary and high schools. Since September 1929 with the exception of the 3-year period that she served with the Women's Army Corps, she has been employed by Metropolitan Life Insurance Co., New York City. She presently occupies the position of assistant office supervisor of one of its branch offices and earns $68 weekly. She has a mother, 3 brothers, and 5 sisters, all of whom are United States citizens. She resides with her mother and two sisters.

Her assets consist of $500 on deposit in a savings account, United States Government bonds valued at $2,100, and clothing, jewelry, and personal effects valued at $1,500.

The Director of the Visa Office, Department of State, submitted the following report dated July 6, 1954, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, July 6, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter of June 8, 1954, and its enclosures, wherein you requested a report on the facts in the case of Sally S. Shulman, beneficiary of H. R. 9400, 83d Congress, 2d session.

According to information contained in the Department's files, Mr. Shulman was refused an immigrant visa by the American Embassy at Tel Aviv, Israel, under the provisions of section 212 (a) (9) of the Immigration and Nationality Act on the ground that he has been convicted on July 4, 1948, in the Magistrates Court of Petach Tiqvah of stealing in violation of section 270 and 23 of Criminal

Code Ordinance No. 74 of 1936 for Palestine. The facts set forth in the court record indicate that Mr. Shulman and an unknown person invited two others to engage in the dismantling of certain pipes which were the property of another person who had not authorized such dismantling. The facts further show Mr. Shulman was adjudged guilty of the offense while the two others involved in the incident were acquitted by the court. The Department's records also reveal convictions recorded against Mr. Shulman on January 4, 1952, for willfully and unlawfully causing damage to property, and on February 28, 1952, on a charge of conspiracy to commit common assault.

As stealing, also known as larceny or theft, has been held to constitute a crime involving moral turpitude within the meaning of the provisions of section 212 (a) (9) of the Immigration and Nationality Act, the American consular officer to whom Mr. Shulman should apply would have no choice other than to continue to refuse to issue a visa in his case.

At this time the Department has no knowledge of any factor in Mr. Shulman's case, other than the information hereinbefore cited, which would render him ineligible to receive an immigrant visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Mr. Shulman from receiving a visa.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Secretary of State.)

Congressman Francis E. Dorn, the author of the bill, submitted the following letters in support of the bill:

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 25, 1955.

Hon. FRANCIS E. WALTER,
Chairman, Subcommittee No. 1, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR COLLEAGUE: Under date of April 20, 1955, I introduced bill H. R. 5767, for the relief of Sally S. Shulman or Zeli Sholman.

The bill was previously introduced by me in the 83d Congress (H. R. 9400), and you have in your file copies of the reports of the Immigration and Naturalization Service (submitted August 24, 1954) and the Department of State (submitted July 6, 1954).

I should like to mention that immediately upon the enactment of Public Law 770 of the 83d Congress, every effort has been directed toward bringing this case to a successful conclusion via the administrative relief contained therein. However, the Israeli Government refuses to cooperate and the American Embassy in Tel Aviv is estopped from completing its action. The wife of the beneficiary of this measure, Mrs. Hannah Sholman, joined her husband in Israel last fall in an effort to assist him in acquiring the necessary evidence from the Israeli Government, but she has met with no success. They refuse to go on record, officially, with regard to the value of the goods involved in the theft which has brought about Mr. Sholman's exclusion under section 212 (a) (9). As a matter of fact, I discussed this matter with the Israeli Embassy here and requested their assistance, to no avail. I am enclosing herewith a copy of a letter received by me from the Department of State, containing information furnished them by the Tel Aviv Embassy—and bearing out the statements contained above.

In view of this anomalous situation, I have again resorted to a legislative remedy. I hope that early consideration by the subcommittee is possible.

Thanking you, and with kind regards, I am

Sincerely yours,

FRANCIS E. DORN.

DEPARTMENT OF STATE,
Washington, March 14, 1955.

Hon. FRANCIS E. DORN,
House of Representatives.

DEAR MR. DORN: I refer to your continued interest in the case of Mr. Sally Shulman, who is an applicant for an immigrant visa at the American Embassy at Tel Aviv, Israel.

The Embassy has recently reported that its efforts to obtain the information which might determine Mr. Shulman's eligibility to relief under section 4 of

Public Law 770 have been impeded because Mr. Shulman due to his calling as a seaman, was unable to appear personally for an interview until January 1955, when he was further advised as to how to obtain the data necessary to reopen his case.

The consular report states that Mr. Shulman has been unable to secure the cooperation of the Israeli police in appraising the value of the goods involved in the theft of wnich he was convicted. The report further states that a police officer finally telephoned the Embassy at Mr. Shulman's request and said that the estimated value of the goods concerned was approximately 100 Israeli pounds. It was also indicated that the police were unwilling to confirm their statement in written form.

The report adds that Mr. Shulman was then informed that if it were established that 100 Israeli pounds was the true value of the goods at the time of the theft further consideration could not be granted under section 4 of Public Law 770.

Tne report states in conclusion tnat no final action was taken and no definitive statements sent Mr. Snulman in view of tne fact tnat no official documents were ever submitted by him in response to the Embassy's requests.

I shall keep you informed of any further developments in the matter.

Sincerely yours,

ROLLAND WELCH, *Director, Visa Office.*

In addition, Congressman Dorn submitted information to the Senate Judiciary Committee and stated that the beneficiary's age was 34 years rather than 22 years, as stated in the report from the Commissioner of Immigration and Naturalization.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 5767) should be enacted.

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Calendar No. 1139

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1127

HELENE RAPP

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6002]

The Committee on the Judiciary, to which was referred the bill (H. R. 6002) for the relief of Helene Rapp, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable Helene Rapp to retain her United States citizenship notwithstanding her residence abroad during the lifetime of her alien daughter, who is mentally retarded.

STATEMENT OF FACTS

The beneficiary of the bill is a 60-year-old widow, who was naturalized a citizen of the United States in 1945. She first entered the United States for permanent residence in 1939. In 1951, following the death of her husband, also a United States citizen and a professor of the history of art at Howard University, the beneficiary went to Switzerland to be with her daughter, who requires constant attention. Her daughter is 29 years of age and is mentally retarded, and the beneficiary is her sole support.

A letter dated June 9, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Director of the Passport Office, Department of State, with reference to the case, reads as follows:

DEPARTMENT OF STATE,
Washington, June 9, 1955.

Re H. R. 6002, for the relief of Helene Rapp

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Your letter of May 7, 1955, has been forwarded by the Visa Office for reply.

Helene Rapp was born in Germany and also had Swiss nationality prior to emigration to the United States in 1939. She was naturalized in August 1945, and went to Switzerland in September 1951, where she is now residing. Mrs. Rapp is a widow and the only support of her daughter, who is about 29 years old but mentally retarded. For medical and financial reasons Mrs. Rapp is unable to bring her daughter to the United States, even if it were possible to obtain a visa for her.

This Office is sympathetic with Mrs. Rapp's unique problem, but is powerless to continue to document her as a naturalized American residing abroad. She was recently given a passport for return to Switzerland after a short trip to the United States, and was advised that she would lose her American citizenship upon resuming her residence in Switzerland in January of this year.

The Department believes that enactment of H. R. 6002 would be equitable, but suggests that the bill be amended to read as follows:

"That, for the purposes of the Immigration and Nationality Act, section 353 (5) (B) shall be held to have been and to be applicable to Helene Rapp during the lifetime of her daughter."

The title of the bill should also be amended to read "For the relief of Helene Rapp."

Sincerely yours,

FRANCES G. KNIGHT, *Director, Passport Office.*

Congressman Arthur G. Klein, the author of the bill, submitted the following letter in support of the bill:

WASHINGTON, D. C., *April 21, 1955.*

Hon. ARTHUR G. KLEIN,
House of Representatives,
Washington, D. C.

DEAR CONGRESSMAN KLEIN: Dr. Meyer Jacobstein and I are writing this to you in the hope that you will sponsor a bill to help Helene Rapp, a widow, out of a very difficult situation. The case is an extremely deserving one. We are looking to you because you are a member of the District of Columbia Committee. Mrs. Rapp is a resident of the District of Columbia, and therefore has no Congressman of her own.

Mrs. Rapp was born in Germany about 60 years ago. In about 1913 she married a Swiss national and thereby herself became a Swiss citizen. The marriage was eventually dissolved. Sometime after the end of World War I, she married Dr. Franz Rapp, director of the Munich Museum of Theater Art, and they lived in Munich. A daughter, Erica, was born of this marriage in about 1926. During the Nazi regime, Dr. Rapp was for a period incarcerated in the notorious Dachau concentration camp, but later released as the result of his good wife's efforts. Escaping from Germany, the Rapps left their daughter in Switzerland and themselves came to the United States and became naturalized citizens, eventually settling in the District of Columbia. Dr. Rapp, while in Washington, was professor of the history of art in Howard University for many years, and until the day of his death. Unfortunately, they were unable to bring their daughter to this country because she is mentally retarded.

Dr. Rapp died in 1951 and Mrs. Rapp went to Switzerland that year to be with her daughter, who requires constant attention. She remained in Switzerland until 1954, when the State Department advised her that, under the provisions of title 8, United States Code Annotated, section 1484 (a) (1), as a naturalized citizen of this country and a former citizen of Switzerland, she could not remain in Switzerland more than 3 years without endangering her United States citizenship. Title 8, United States Code Annotated, section 1485 (5) (B), does provide for successive 6-month extensions of this 3-year limitation if necessary for the medical attention of a child—"child" being defined in tide 8, United States Code Annotated, section 1101 (b) (1), as under 21 years of age. Unfortunately for Mrs. Rapp, her daughter Erica is 29 years of age and therefore not

within the law's definition, although she is mentally a child. Mrs. Rapp has produced medical affidavits (now in the State Department's file) showing that her presence with her daughter is medically necessary to the daughter's mental health.

Mrs. Rapp has discussed her problem at length with Miss Johnson, of the State Department's Passport Division. Miss Johnson has advised her to have a private bill introduced into Congress to provide that her daughter Erica shall be deemed to be a minor within the meaning of title 8, United States Code Annotated, section 1485 (5) (B). The practical effect of the passage of such a law would be that Mrs. Rapp could then remain with her daughter in Switzerland without endangering her United States citizenship, so long as she could provide satisfactory evidence of medical necessity for doing so every 6 months. Miss Johnson also indicated that the State Department is interested in trying to help Mrs. Rapp and, if consulted, probably would not oppose such a bill. Mr. Besterman, of the House Judiciary Committee (to which such a bill would most likely be referred), is familiar with the case and has kindly offered technical assistance in drafting the bill. Congressman Celler, chairman of the Judiciary Committee, is also familiar with the case.

Mrs. Rapp (who has meanwhile returned to Switzerland) is in the unfortunate position under existing law of having to choose between her love for her daughter and her love for this country. She has shown her good faith and loyalty by returning here when the State Department suggested she do so, although the trip involved a sacrifice on her part, particularly financially. Surely it was not the intention of the law to place her in such a difficult position under the appealing circumstances she faces. Certainly it would be humane and in accord with the spirit of the law to treat her as the law now treats the mother of a minor child needing her mother's care. For if Erica were today a minor, there would be no problem.

In appealing to you to sponsor such a bill, I would like to emphasize two facts: First, Mrs. Rapp has nothing to gain materially by retaining her United States citizenship. Her only remaining close relative—her daughter—resides in Switzerland. Mrs. Rapp's desire to continue her status as a United States citizen is based entirely upon her love of this country and gratitude for the haven we provided for her and her husband and in view of the many happy years the couple spent here. Both of them were sterling citizens and her retention of United States citizenship would be a distinct asset to this country. Second, neither Dr. Jacobstein nor I are related to the Rapps, and neither of us is receiving any fee in connection with our attempt to aid her. We are doing this purely out of friendship and the desire to help a worthy woman in a worthy cause.

Confirmation of the facts set forth above can be obtained through Miss Johnson. If further details are needed, I will be glad to supply them.

Please advise either of us of your decision in the matter. We trust it will be favorable.

Sincerely,

SYDNEY S. ASHER, Jr.
Dr. MEYER JACOBSTEIN.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 6002) should be enacted.

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Calendar No. 1140

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1128

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MRS. FLORENTINE KINTZEL

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6036]

The Committee on the Judiciary, to which was referred the bill (H. R. 6036) for the relief of Mrs. Florentine Kintzel having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of crimes involving moral turpitude in behalf of the mother of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 53-year-old native and citizen of Germany who presently resides in that country. The record discloses that she was convicted on two occasions in 1946 for the theft of potatoes. The beneficiary's daughter is a naturalized citizen of the United States and is the widow of a citizen serviceman who had served in the United States Army in both Europe and the South Pacific. The beneficiary's daughter has had several serious operations and her health is very delicate. She faces a long period of recuperation, and is most anxious to have her mother join her in this country, and without the waiver provided for in the bill, the beneficiary will be unable to qualify for a visa.

Congressman Joseph P. O'Hara, the author of the bill, wrote to the chairman of a subcommittee of the Committee on the Judiciary of the House of Representatives on June 22, 1955, as follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 22, 1955.

Re H. R. 6036, for the relief of Mrs. Florentine Kintzel.

Hon. FRANCIS E. WALTER,
Chairman, Subcommittee on Immigration,
Committee on the Judiciary, House Office Building,
Washington, D. C.

DEAR MR. WALTER: The facts surrounding the introduction of the above bill are substantially as follows:

Mrs. Irene Turner, who is a resident of St. Peter, Minn., and a constituent in my congressional district, is the widow of Sgt. Russell Turner, who was in the American Army and served in both Europe and the South Pacific. These young people were married in 1948. Sergeant Turner, who had remained in the service, died May 10, 1953.

For the past 2 years Mrs. Turner has been in various hospitals because of serious illness and has had extensive surgery on several occasions. As a result of these operations her health is extremely delicate. She has no relatives in this country and is most desirous that her mother be permitted to come here to be with her.

In taking up the matter of obtaining a visa for her mother, Mrs. Florentine Kintzel, I was informed that Mrs. Kintzel would not be permitted to enter the United States under section 212 (a) (9) of the Immigration and Nationality Act of 1952 because she was twice convicted of theft. I requested the American consulate general at Hamburg to furnish me with copies of the court record, which I attach herewith along with translations prepared by the Library of Congress.

I am informed that actually these alleged court violations were similar to what were OPA violations. People who were found in possession of food which they had not purchased under the regulations were so charged. What happened generally was that these people desperate for food would exchange either money or jewelry or whatever they had left in order to buy potatoes for themselves and their families in order to eat. As you will note, the fines were exceedingly small, and I assume in this country they would be classed as misdemeanors.

I do feel that these so-called convictions are not the convictions of a person of criminal tendencies at all, and the entrance into this country of Mrs. Turner's mother, Mrs. Kintzel, is of tremendous importance to her welfare. I would deeply appreciate the earliest possible hearing upon this bill.

Sincerely yours,

JOSEPH P. O'HARA,
Member of Congress.

In addition, Congressman O'Hara submitted the following information relating to the beneficiary of the bill:

THE FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA,
AMERICAN CONSULATE GENERAL,
Hamburg, Germany, March 7, 1955.

Hon. JOSEPH P. O'HARA,
House of Representatives,

MY DEAR MR. O'HARA: The receipt is acknowledged of your letter of February 28, 1955, concerning the immigrant visa application of Mrs. Florentine Kintzel, the mother of Mrs. Irene Turner, of Port Townsend, Wash.

Mrs. Kintzel was found to be inadmissible to the United States under section 212 (a) (9) of the Immigration and Nationality Act of 1952 because she was twice convicted of theft. It is noted that you have been asked to introduce a private bill on behalf of Mrs. Kintzel. In accordance with your request, there are enclosed copies of the court records on the above convictions.

Your interest in this case has been noted, and you may be assured that every consideration consistent with the immigration laws and regulations will be given to Mrs. Kintzel's case if a private law should be passed on her behalf.

Sincerely yours,

GEORGE F. BOGARDUS,
American Consul.

[Translation (German)]

[Certified copy]

AMTSGERICHT, AHAUS, *December 6, 1946.*

Effective.
Ahaus, December 23, 1946.
Signed: Vogel, Chief Clerk.
To:

(1) Mrs. Florentine Kintzel, born on March 31, 1902, at Bruenwitz/Posen, residing at Waldstrasse 6, Gelsenkirchen-Buer, allegedly without police record;
(2) Mrs. Stanislaus Sczepanski, born on November 30, 1888, at Rutta-Pusta/Posen, residing at Waldstrasse 6, Gelsenkirchen-Buer, allegedly without police record;
(3) Miss Stanislawa Sczepanski, barmaid, born on August 26, 1918, at Gelsenkirchen-Buer, residing at Waldstrasse 6, Gelsenkirchen-Buer (no police record).

COURT ORDER

The district attorney charges you with having stolen, acting jointly, from the barn of Farmer Bernhard Liesert, a total of 475 kilograms of potatoes.
Violation of paragraphs 242, 47, 27 (b) of the Penal Code.
Evidence: I, Your confession; II, testimony of Farmer Bernhard Liesert, of Schoeppingen-Heven No. 82.

By order of the district attorney, a fine of RM 150 each was imposed, in substitution for a prison term of 30 days which is considered as served.
At the same time, your are liable to payment of the costs of the trial. You may appeal this court order, in writing or in person, at the above Amtsgericht, in the offices of the clerk, within 1 week. Otherwise after this period has expired, the court order becomes effective.
The fine of RM 150 each, and the costs of RM 7.50, or a total of RM 157.50 each tabulated below, must be paid within 1 week from the date on which this order becomes effective.
The amount may be paid:

(1) by remittance of court fee stamps to the above court, or
(2) by payment into the postal checking account of the court treasurer, or
(3) by remittance to the accounts mentioned below, or
(4) by payment in cash to the treasurer of the court at van Deldenstrasse 8, Ahaus.

Re (1) court fee stamps can be bought in all courts. The stamps should be sent to the above office, enclosed in an envelope, and, in case of considerable amounts, most appropriately by registered mail or by money order.
Re (3) the above file number, as well as the case, must be identified or specifically mentioned at the treasurer's office when the costs are paid.
Re (4) in case of cash payment, this order must be submitted. Cash payment may be made only at the court treasurer's office.
All remittances must be properly franked. If the payment periods are not observed, compulsory collection is made without previous warning.

(Signed) BAULE,
Amtsgerichtsrat.

Accounts: Postal checking account: Dortmund No. 57067. Office hours for payments in cash: 9 to 12 o'clock.
Costs: Fee for court order: $7.50 each (according to par. 53 of the law concerning court fees and costs).
This is a true copy of the original submitted to me.
Ahaus in Westphalia, June 5, 1954.

(Signed) TUNNS (?),
Court Recording Clerk.

Rubber stamp of Amtsgericht No. 9, Ahaus, Westphalia.
Translated by Elizabeth Hanunian, March 15, 1955.

[Translation (German)]

AMTSGERICHT, GELSENKIRCHEN-BUER,
October 30, 1946.

To:

(1) Mrs. Stanislawa Stewanski, born on November 30, 1888, residing at Waldstrasse 6, Gelsenkirchen;
(2) Mrs. Florentine Kintzel, born on March 31, 1902, residing at Waldstrasse 6, Gelsenkirchen-Buer.

COURT ORDER

The district attorney charges you with having stolen, acting jointly, 80 pounds of potatoes at Kirchhellen on September 24, 1946.

Violation of paragraphs 242, 47, 27b, of the Penal Code.

Evidence: Your confession.

By order of the district attorney, a fine of 30 RM each was imposed, in substitution of a prison term of 10 days each which is considered as served.

At the same time you are liable to payment of the costs of the trial.

This court order becomes effective unless you appeal, in writing or in person, to the above Amtsgericht, in the offices of the clerk, within 1 week from the date of receipt of this notification. An appeal in writing must be received at this office within 1 week [from this date].

The fine of 30 DM each plus the costs of 2.50 DM each, tabulated below, or a total of 32.50 DM, must be paid within 1 week from the date on which this order becomes effective.

The amount may be paid:

(1) by remittance of court fee stamps to the above court, or
(2) by payment into the postal checking account of the court treasurer using the enclosed money order form, or
(3) by remittance to one of the accounts mentioned below, or
(4) by payment in cash to the treasurer at Westerholterstasse 7, Gelsenkirchen-Buer.

Re (1) court fee stamps can be bought in all courts. The stamps should be affixed to the back of the enclosed money order form and transmitted, enclosed in an envelope, to the Amtsgericht mentioned above, and in case of considerable amounts, most appropriately by registered mail or by money order.

Re (3) when remittance is made, the above file number, as well as the case, must be referred to, or mentioned specifically when payment is affected at the court treasurer's office.

Re (4) in case of cash payment, this order must be submitted. Cash payment may be made only at the court treasurer's office.

All remittances must be properly franked.

If the payment periods are not observed, compulsory collection is made without previous warning.

(Signed) Dr. DAHMANN,
Amtsgerichtsrat.

Accounts:

Landeszentralbankgirokonto (land central bank account).
Postal checking account: Dortmund No. 20270.
Office hours for payments in cash: 9 to 12 o'clock.
Costs: Fee for court order, according to paragraph 53 of the law covering court fees and costs: (1) 2.50 DM, (2) 2.50 DM.
This is a true copy of the original.
Gelsenkirchen-Buer, June 9, 1954.

(Signed) OPPERMANN,
Court Recording Clerk.

Rubber stamp of Amtsgericht No. 29, Gelsenkirchen-Buer.
Translated by Elizabeth Hanunian, March 15, 1955.

Senator Edward Thye has introduced in the Senate S. 1930, for the relief of the same beneficiary. In view of the fact that the committee is reporting the instant bill favorably, the bill, S. 1930, will be indefinitely postponed.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 6036) should be enacted.

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Calendar No. 1141

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1129

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LUISA GUIDI MILLER

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6896]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6896) for the relief of Luisa Guidi Miller, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child adopted by a citizen of the United States the status of a nonquota immigrant which is the status normally enjoyed by the alien minor children of citizens of the United States.

STATEMENT OF FACTS

The beneficiary of the bill is a 17-year-old native and citizen of Italy whose mother is married to M. Sgt. Charles C. Miller, a citizen of the United States and member of our Armed Forces. The beneficiary presently resides in Paris, France, with her mother and stepfather, who adopted her in Italy. The beneficiary's mother was previously married in a church ceremony, but due to her father's objections a civil marriage was never performed. Therefore, the beneficiary is unable to qualify for a nonquota visa. The beneficiary's natural father was killed while serving in the Italian Army. The beneficiary's mother has qualified for a nonquota visa as the wife of a United States citizen.

Congressman W. R. Poage, the author of the bill, submitted the following information in connection with the case:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C. June 27, 1955.

HON. FRANCIS E. WALTER,
Chairman, Subcommittee on Immigration and Naturalization,
House Judiciary Committee.

DEAR MR. CHAIRMAN: On June 16, 1955, I introduced an immigration bill for the relief of one Luisa Guidi Miller. A copy of the bill is enclosed.

This is a very peculiar case, and I am, therefore, writing you to see if the passage of my bill could not be expedited. It seems that M. Sgt. Charles C. Miller met an Italian national when he was serving in Italy and married her by proxy from Temple, Tex., after he returned. The marriage is recorded in the public records at Belton, Tex. Sergeant Miller then proceeded to Korea where he served for some time, and was later transferred to France where the marriage was consummated. Sergeant Miller and his wife have been living together in France for the past 3 years and are slated to be returned to the States in September of this year.

When Mrs. Miller was previously married, she had married in the Catholic Church, but due to the objections of her father, a civil marriage was never performed. Her first husband was killed while serving in the Army in Italy. There was a daughter born to her from her first marriage, and as the marriage was never registered with civil authorities, this child is considered to be illegitimate in the eyes of our State Department. Since Sergeant Miller has been with his family in France, he has legally adopted this child who is now 17 years of age. He would like very much to bring her back to the States with him when he and his wife are returned in September, but as our State Department looks upon the child as being illegitimate, she is given a fourth-quota status, and this quota, as you know, is heavily oversubscribed.

There are enclosed documents substantiating all of the facts that I have given you in this letter. There is also enclosed a recent letter from Sergeant Miller, explaining why it was impossible for him to obtain a document showing that Mrs. Miller's first marriage was performed by the church. Of course, I do not know if it is possible to consider the enclosures as sufficient evidence for your committee to act upon my bill, but it seems that Sergeant Miller has acted in good faith in his relationship with this wife, and if Mrs. Millr's first marriage had been recorded with a civil government, there would have been no question as to her daughter's being admitted on the same basis as she is, that being nonquota. I hope that your committee can approve this bill this session in order that the child can accompany her parents to the States.

Thanking you, I am,
Yours sincerely,

W. R. POAGE.

ORLEANS, FRANCE, *August 6, 1955.*

To: Hon. Sam Rayburn, House of Representatives, Congress of the United States, Washington, D. C.

From: M. Sgt. Charles C. Miller, RA 974089, Headquarters Company, Com. Z–USAREUR, 7966 Army Unit, Eng. Division, A. P. O. 58, care of Postmaster, New York.

HONORABLE SIR: In 1951 I was stationed at Fort Hood, Tex., and had bought 3 acres of land at Belton, Tex., on which I built a house, expecting to be able to bring my family there to live. I had married an Italian national by telephone from the judge's office in Temple, Tex. which I was told was legal under the laws of Texas and certificate is recorded at Belton, Tex. I also had it certified by the Italian consul which upon being sent to Italy was recorded and made legal by the Italian civil authorities. A photostat copy is enclosed. I done this as I was in the pipeline to Korea and wished my wife to have a regular income to live on which I would not be able to do when on the front in Korea. I knew this kind of marriage would not be recognized by the State Department for immigration purpose but planned on my return from Korea to return to Italy and live with my family which I have done now for 3 years and so have cleared the marriage with the American consul at Paris. I reenlisted in Germany and was sent here to Orleans, France for duty. Have had my family here with me close to 3 years. Now my wife has been cleared by consul at Paris and can get her visa as a nonquota admission to the United States so any part of enclosed letters about can be passed over.

I had been told and assumed that all dependents of a United States Army soldier would be admitted to the United States as nonquota immigrant, now after being here 3 years am told by the United States consul at Paris that the daughter of my wife who I have adopted under the Italian law will have to go on a fourth-preference quota, which has been filled up for a number of years and would cause a long wait.

As I am due to return to the United States in September this year for discharge and end of 36-month tour of duty. The placing of my daughter on fourth-preference quota would split up my family and cause me heavy expense as I would have to pay someone here to take care of her for a long time and would have to pay her boat trip to the United States. Putting her on a quota would completely nullify all the efforts I have made the last 4 years to get my family together and get them back to the States. In Italy they have two types of marriages, church and civil; many just have a church marriage which was what my wife had at her first marriage due to not being able to get her father's consent and could not later on have the civil marriage as her husband was killed in Africa during the war. Due to no civil marriage or civil records, our State Department class her as illegitimate (daughter) and blood relation count as nothing.

I enlisted the first time in 1917 and was over here with the 89th Division. The French are giving me the Verdun Medal on July 14 which is their Bastille Day; this is the second French medal given me. In the World War II, I was in Africa and Italy till 1948. Then in Korea 1951 and 1952 with the 2d Infantry Division and given a Bronze Star Medal. This makes three wars that I have been on the front line.

What I ask for is so little compared with what I done in the years of service in the Army, that I think I should be allowed to keep my family together.

The only thing I can see now is to try and get a bill through Congress to place my adopted daughter on the nonquota list so she can go with me and her mother to the United States at the same time.

As I am due to return the first part of September, can a bill be passed before this time?

Am enclosing the photostats as I had first sent to Hon. Lyndon B. Johnson and of which the originals are with the American consul at Paris, also photostats of State Department letters so you need not go through with this the second time.

You no doubt can answer my question from reading these letters and photostats.

Is it possible to get a bill through for my adopted daughter to be admitted as a nonquota immigrant and how long would it take?

Am sorry to ask you for help but I hate to look forward to having my family split up for a number of years.

Sincerely yours,

M. Sgt. CHARLES C. MILLER.

ORLEANS, FRANCE, *June 23, 1955.*

To: W. R. Poage, Congressman, House of Representatives, Washington, D. C.
From: M. Sgt. Charles C. Miller RA974089, Headquarters Company Command Z–USAREUR, 7966 Army Unit, Engineer Division, A. P. O. 58 c/o Postmaster, New York, N. Y.

HONORABLE SIR: In answer to your letter of the 17th.

I appreciate very much your taking hold of my case, as to getting a bill through Congress so I could bring my adopted daughter (who also is my wife's daughter) with us to the United States on a nonquota visa.

No doubt Hon. Sam Rayburn has turned over to you all the photostats and letters I sent to him, originals are with the American consul in Paris.

As to background and clearance, I think you can get a good idea from the photostats I sent. The Italian Government will not issue a passport to anyone unless they are cleared by the police of their hometown or any other place they have lived. By Italian regulation the child is on the mother's passport up to the age of 15 years which my adopted daughter was when I brought them up here to France the first time 3 years ago. Since then she passed that age so I had to send back to Italy and get clearance from the police and all records for her, the same as for older persons.

Now both my wife and adopted daughter have Italian passports stamped cleared for the United States.

The papers on file at the American consul in Paris state that at no time have either my wife or daughter been menbers of any political party.

As to my wife's first marriage, I have asked a lot of questions to clear up just why and what took place. The Italian thinking and laws are different from what we are used to, also religion is mixed up with the case.

As near as I can find out, my wife at the age of 19 wished to marry, her father would not give his consent so they were blocked from a civil marriage. It was and is now against the law for a church marriage or to be registered in a church record and a priest so involved could be sent to jail, if not first been registered with the civil authorities.

So I asked my wife why they went before a priest if it could not be recorded and she answered that as they were Catholic and by having the blessing of the priest and the Catholic Church they would be married before Christ and could go to confessional the same as any other Catholic person. There was no record made and in that way there was nothing for the civil authorities to take action on. Nothing could be done at a later date to make the marriage legal as the husband was drafted into the Italian Army and sent to Africa. He was killed some 2 months before the girl was born. Later my wife tried to get the marriage legalized but as the father was dead nothing could be done.

The American consul at Paris has classed the girl as illegitimate and placed her on the adopted-children quota regardless of blood relation.

The Italian quota are filled up for some time to come, and as I am in the United States Army I have to return to the United States when my oversea tour of duty is up even if I have to leave my daughter behind.

I will try for an extension of time on this tour in order to give us more time on this case. The Army may give me an extension on overseas duty and they may not. If the Army do let me say, I would have to reenlist here which would mean that when I was returned to the United States they could send me any place they wished and I would have no control over the matter and no doubt they would send me some other place than Fort Hood, Tex.

As the case stands now:

No documents can be got from the Catholic Church.

The Visa Section class the girl as illegitimate, although she is my wife's daughter and would be a blood relation, and I have adopted her and have taken care of her and sent her to school for 4 years, also all of us have been living together here in France for 3 years. To be returned to the United States without the mother and daughter being on the nonquota visa classification would cause me a great deal of trouble and money.

I could understand the Visa Section if the child was an orphan in Italy and was being adopted by someone in the United States but in this case I am in the United States Army and have to go where they send me and the child has been adopted a number of years ago and we have been living together for a number of years as a family.

I feel that the case if different and that the classification should be different.

If anything shows up on this end, will forward it to you at once.

Yours respectfully,

M. Sgt. CHARLES C. MILLER.

DEPARTMENT OF STATE,
Washington, May 17, 1955.

Hon. LYNDON B. JOHNSON,
United States Senate.

DEAR SENATOR JOHNSON: I refer to your letter of May 10, 1955, with which was transmitted the enclosed communication from M. Sgt. Charles C. Miller, RA974089, Headquarters Company Com. Z-USAREUR, 7966 Army Unit, A. P. O. 58, c/o Postmaster, New York, N. Y., concerning his desire to have his adopted stepdaughter, Miss Luisa Guidi Miller, accompany him and his wife, Mrs. Emma Guidi Miller, upon their return from France to the United States. Reference is also made to the telephone conversation of May 10 pertaining to the same matter.

The Attorney General has ruled that a child born out of wedlock, fathered by a man other than the husband of the child's mother, is not a child within the meaning of section 101 (b) (1) of the Immigration and Nationality Act. If, as the information furnished indicated, Miss Miller was born out of wedlock, she would not be eligible for the nonquota status provided by the act for certain stepchildren of American citizens. However, she is entitled to fourth preference status under the Italian quota as the adopted child of a citizen of the United States on the basis of approved petition VP 20-6572 which is now on file at the American Embassy at Paris.

The Italian quota, including the portion thereof that is made available for qualified applicants of the fourth preference category, has been heavily oversubscribed for some years. Present indications are that a protracted period of waiting is to be anticipated before a fourth preference number from the quota can be assigned to Miss Miller on the basis of her priority date of February 8, 1955.

In view of your interest, I am sorry that it is not possible to furnish you a more encouraging report in this matter. Unfortunately, there is no provision in the law whereby the issuance of a visa to Miss Miller may be expedited because of the existence of a hardship factor or compassionate circumstances in her case.

Sincerely yours,

ROLLAND WELCH,
Director, Visa Office.

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN EMBASSY,
Paris, France, June 23, 1955.

Hon. W. R. POAGE,
House of Representatives.

MY DEAR MR. POAGE: I refer to your letter of June 17, 1955, in behalf of M. Sgt. Charles C. Miller, RA974089, Headquarters Company Command Z-USAREUR, 7966 Army Unit, Engineer Division, APO 58, c/o Postmaster, New York City, N. Y. You state that a private bill has been introduced requesting nonquota status be granted to his adopted daughter, Luisa Guidi Miller, the illegitimate child of his wife, Mrs. Emma Miller.

The Immigration and Naturalization Service Officer in Frankfort, Germany, approved petitions filed on February 8, 1955, by Master Sergeant Miller, granting nonquota status to Mrs. Miller and fourth preference status to Luisa Miller. Section 101 (a) (27) (A) of the Immigration and Naturalization Act of 1952 provides that an illegitimate child of an alien mother who marries a United States citizen other than the father of the child is not a stepchild within the meaning of section 101 (b) (1) (B) and is not eligible for nonquota status.

The documentation of Luisa Miller's application is completed and has received preliminary approval. However, fourth preference Italian quota numbers are not available for Miss Miller's priority date and it is not possible to estimate accurately how long the waiting period will be before her turn is reached.

It is not yet possible to make a tentative statement as to Mrs. Miller's elibigility to receive an immigrant visa for the United States, inasmuch as the necessary investigations in progress concerning her residence in Italy have not been completed.

I have noted your interest in this case and will communicate with you upon the receipt of the required additional information. I want to assure you that the Millers' applications are being accorded every consideration consistent with the immigration laws and regulations.

Sincerely yours,

FREDERICK B. LYON,
American Consul General.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 6896) should be enacted.

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Calendar No. 1142

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1130

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BART KRIJGER

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 366]

The Committee on the Judiciary, to which was referred the bill (S. 366) for the relief of Bart Krijger, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On line 10, change the period to a colon and add the following:

Provided further, That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the said Act.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provisions of existing law relating to one who is feeble-minded and is mentally defective in behalf of the son of lawful resident aliens of the United States. The bill has been amended to provide for the posting of a bond as a guaranty that the beneficiary will not become a public charge.

STATEMENT OF FACTS

The beneficiary of the bill is a 9-year-old native and citizen of Holland whose parents and 8 brothers and sisters have been admitted to the United States for permanent residence. He was found to be inadmissible because of a mild case of Mongolism and has been living in Holland with friends. Both parents are medical doctors and are employed at a sanatorium in Colorado. They have the financial means to insure that the beneficiary will never become a public charge.

A letter, with attached memorandum, dated September 7, 1954, to the chairman of the Senate Committee on the Judiciary from the

Commissioner of the Immigration and Naturalization Service with reference to S. 3751 which was a bill pending in the 83d Congress for the relief of the same alien reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., September 7, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 3751) for the relief of Bart Kryger, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the El Paso, Tex., office of this Service, which has custody of those files. According to the records of this Service, and the beneficiary's parents, the correct name of the beneficiary is Bart Krijger.

The bill would waive the provisions of the Immigration and Nationality Act which exclude from admission into the United States aliens who are feebleminded and mentally defective, and would grant the alien permanent residence if he is found to be otherwise admissible. However, the bill does not limit this exemption to a ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of the act.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE BART KRIJGER, BENEFICIARY OF S. 3751

Information concerning the case was obtained from Pieter A. Krijger and Anna E. Krijger, the 8-year-old beneficiary's parents, who reside at 2585 South Marion Street, Denver, Colo. Mr. and Mrs. Krijger and six of their children were admitted to the United States for permanent residence on May 24, 1954. Two other children were admitted for permanent residence on July 19, 1954. Mr. Krijger and all of his children were born in the Netherlands and are citizens of the Netherlands. According to the parents, the beneficiary was denied a visa for admission to the United States because he was excludable under the immigration laws as a mental defective.

Mr. and Mrs. Krijger stated the child is a mild case of Mongolism and is mentally retarded. They asserted that he is not a true Mongoloid. According to his parents, he is residing with a friend of his former schoolteacher, Mrs. Barthel, at Anna Van Burenlaan 45, Haarlem Z, Netherlands. His parents stated that he is in the second grade of school, and if permitted to enter the United States, he will attend Denver public school for retarded children.

Mr. and Mrs. Krijger are interns at the Porter Sanitarium and Hospital, 2525 South Downing Street, Denver, Colo. They receive a salary of $37.50 per week each and $15 per week for both as rental allowance. Mr. Krijger alleges that he receives the equivalent of $1,200 per year as a military pension from the Netherlands Government and will continue to receive it as long as he is a citizen of the Netherlands. The home occupied by Mr. and Mrs. Krijger and their eight children is owned by Porter Sanitarium and Hospital. They pay $88 every 4 weeks for rent and utilities. According to hospital officials at Porter Sanitarium and Hospital, Mr. and Mrs. Krijger will be resident physicians at the hospital after completing a 1-year internship.

The committee may wish to communicate with the Bureau of Security and Consular Affairs of the Department of State in order to obtain further information concerning the beneficiary.

Former Senator Edwin C. Johnson, the author of S. 3751, submitted the following letters in support of the bill:

PORTER SANITARIUM AND HOSPITAL,
Denver, Colo., July 23, 1954.

Senator EDWIN C. JOHNSON,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR JOHNSON: Regarding Dr. P. A. M. Krijger and Dr. Anne E. Krijger will say that recently these two good folk came to this hospital from Holland and are employed here under appointments of 2 years each. They are serving in the capacity of interns. Both are established physicians in Holland and are serving here on an intern basis until such time as they can establish citizenship and apply for licenses to practice medicine.

They have one child in Holland for whom permit has not yet been obtained to come to the United States. I understand they are enlisting your aid in this. I can verify both their permanent employment here and their responsibility. Any assistance you can give them will be appreciated.

I have appreciated your thoughtfulness in keeping me informed on the health legislation that has been before the Congress, and I thank you for courtesies extended in this matter.

Cordially yours,

H. E. RICE, *Manager.*

CATRON CLINIC,
Englewood, Colo., July 17, 1954.

Senator ED. JOHNSON,
Washington, D. C.

DEAR SENATOR: I would like first to take this opportunity to thank you for the help you have given me in the past.

I am now writing you in regard to a man and wife, both of whom are qualified M. D.'s who graduated in Holland and are now taking a retraining period at the Porter Hospital and Sanitarium in Denver as internes in order to qualify them for practice here in the United States. Their names are Peter A. M. Krÿger and Annie E. Krÿger. These two have 8 or 9 children whom they have received permission to bring into the United States. One of these has been refused admission on the basis that he is a mongol. His name is Bart, 8 years of age. I would like to ask your help in seeing what can be done to ease the way and try to have this boy admitted to the United States. Since the mother and father are both M. D.'s and expect to practice medicine here it is highly unlikely that this child should ever become a ward of the State. I can highly recommend both these people as I know them and at the present time working with them there at the hospital.

Sincerely yours,

JAMES F. MEZEN, M. D.

[Translation]

HAARLEM, *March 26, 1954.*

Having learned that Dr. P. A. M. Krijger (living at Overveen, Militairenweg 18) is allowed to emigrate with his family, with the exception of his little son Bart, I—as head of the Dr. A. van Voorthuijsenschool—cannot abstain from expressing my thoughts about this.

I have always ascertained that there exists a solid tie of love and dedication in this family and now I ask myself: "What purpose does this separation serve?" "Why must Bart do without parental love?" "And why must the parents live on with the sorrow that their child is suffering this deprivation." No institution, however well-managed, can fill this gap. The joy of life will be very much tempered both for parents and child. Is this conducive to the working power of either?

Besides I have been able to ascertain such progress with Bart at school that it justifies the expectation that the little chap will be able to perform productive work later on.

Therefore, I have come to the conclusion that not the tearing asunder of this family, but on the contrary their staying together is the only right way.

The HEAD OF THE DR. A. VAN VOORTHUIJSENSCHOOL.
G. BOAR.

Senator Eugene D. Millikin, the author of the instant bill, submitted the following letter in connection with the case:

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
March 11, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: On January 14, 1955, S. 366, a private bill for the relief of Bart Krijger was introduced jointly by myself and Senator Allott. Senator Johnson of Colorado introduced S. 3751 during the 83d Congress for the same beneficiary.

The beneficiary of this bill is an 8-year-old boy who was born in the Netherlands. His parents, Peter A. Krijger and Ann Krijger are citizens of the Netherlands. Mr. and Mrs. Krijger are the parents of 8 other children, 6 of whom were admitted to the United States for permanent residence on May 24, 1954. Two other children were admitted for permanent residence on July 19, 1954. According to my information, the child is mentally retarded to a slight degree suffering from a mild case of mongolism. He is presently attending school in the Netherlands.

I wish to point out to the committee that both parents of this child are medical doctors who formerly practiced medicine in Holland for approximately 19 years. They are presently serving as interns at the Porter Sanitarium and Hospital in Denver, Colo. Their present contract expires in June 1955. At the present time, Dr. Krijger reportedly receives approximately $1,200 each year as a military pension from the Netherlands Government. He also receives a salary and rental allowance from the hospital. I have been informed that there is no possibility of the beneficiary becoming a public charge because both parents are professional people who appear to have an excellent background and who will be able to pursue their profession in the United States. I have been advised that hospital officials expect to continue the parents on their staff as resident physicians at the hospital after they complete their internship.

The present situation creates a hardship on the family. It is difficult at best to maintain a large family and even more so when one member is separated from the others. European families are known for their strong ties to each other and I am certain that being separated from their son has caused Dr. and Mrs. Krijger considerable difficulty. In the event that the beneficiary of this legislation is permitted to enter the United States, I understand he will attend a public school for retarded children in Denver, Colo. I have recently been advised by letter under date of March 10, 1955, that Peter and Anna Krijger have filed their applications for first citizenship papers.

I wish to request that this matter be presented to your committee at an early date. I hope that it will be given favorable consideration.

With very best regards, I am

Sincerely,

EUGENE D. MILLIKIN,

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 366), as amended, should be enacted.

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Calendar No. 1143

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1131

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JOSE ALVAREZ

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 421]

The Committee on the Judiciary, to which was referred the bill (S. 421) for the relief of Jose Alvarez, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That, notwithstanding the provision of section 212 (a) (9) of the Immigration and Nationality Act, Jose Alvarez may be admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of that Act: *Provided*, That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of this Act.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who admits the commission of a crime involving moral turpitude in behalf of the husband of a United States citizen. The bill, as originally introduced, would have granted the beneficiary the status of permanent residence in the United States. However, the beneficiary is presently residing abroad, and the bill has been amended accordingly.

STATEMENT OF FACTS

The beneficiary of the bill is a 28-year-old native and citizen of Cuba, who last entered the United States on February 14, 1952. He was excluded on the ground that he admitted the commission of the

crime of perjury prior to entry. He was subsequently paroled into the United States. The record discloses that when the beneficiary was previously in the United States as a temporary visitor, he executed an application for an extension of his temporary stay in which he stated under oath that he was not working at the time when, in fact, he was gainfully employed. The beneficiary was married on September 8, 1951, to Angelina Tonza, a United States citizen, and they have one citizen child. The beneficiary presently resides abroad with his citizen wife and child and, without the waiver provided for in the bill, he will be unable to accompany them to the United States.

A letter, with attached memorandum, dated November 27, 1953, to the then chairman of the Senate Judiciary Committee from the Acting Commissioner of Immigration and Naturalization with reference to S. 2337, which was a bill which passed the Senate during the 83d Congress, reads as follows:

NOVEMBER 27, 1953.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 2337), for the relief of Jose Alvarez, there is annexed a memorandum of information from the Immigration and Naturalization Service files concerning the beneficiary.

The bill would grant the alien permanent residence in the United States upon payment of the required visa fees. The bill is apparently intended to waive the excluding provisions of the Immigration and Nationality Act which apply to aliens who admit the commission of acts which constitute the essential elements of moral turpitude.

It is suggested that the committee may wish to amend the bill by deleting all that follows the enactment clause and substituting the following:

"That, notwithstanding the excluding provisions of section 212 (a) (9) of the Immigration and Nationality Act, Jose Alvarez shall not be excluded from the United States for causes of which the Department of Justice or the Department of State had knowledge prior to the enactment of this Act."

Sincerely,

———— ————, *Acting Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE JOSE ALVAREZ, BENEFICIARY OF S. 2337

The alien, Jose Alvarez, or Jose Alvarez y Flores, was born on March 14, 1927, in Habana, Cuba. He last entered the United States on February 14, 1952, at Miami, Fla. He was excluded from admission but was subsequently released on bail at the order of the United States District Court. The alien was excluded on the ground that he admitted the commission of acts constituting a crime involving moral turpitude prior to entry, to wit, perjury. This offense occurred during a previous stay of the alien in the United States as a temporary visitor. In applying for an extension of his temporary stay he stated under oath that he was not working at the time, when in fact he was gainfully employed.

The beneficiary's appeal from the excluding order of the Board of Special Inquiry was affirmed by the Board of Immigration Appeals. He filed a writ of habeas corpus in the United States District Court which was dismissed. His appeal from the dismissal of the writ was dismissed by the United States Court of Appeals.

Mr. Alvarez married a native-born citizen of the United States in New York on September 8, 1951. He is presently employed as an auditor by a hotel in Miami, Fla., at a salary of $50 per week. His wife is employed as a secretary by a Miami hotel at a salary of $200 per month.

The beneficiary was a member of the Spanish Falange from 1940 to 1943.

In addition, the following letter, dated March 31, 1955, to the chairman of the Senate Judiciary Committee from the Commissioner

of Immigration and Naturalization with reference to the beneficiary, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., March 31, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for a report on the bill (S. 421) for the relief of Jose Alvarez.

The bill would provide that the beneficiary shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment upon payment of the required visa fee.

The records of this Service indicate that the beneficiary departed from the United State on January 22, 1955, destined to Spain by way of Cuba.

Sincerely,

——— ———, *Commissioner.*

Senator George Smathers, the author of the bill, submitted a number of letters and documents in connection with the case, among which are the following:

[UNITED STATES SENATE,
COMMITTEE ON FINANCE,
February 9, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.]

DEAR SENATOR: Reference is made to S. 421, a bill introduced by me for the relief of Jose Alvarez.

I introduced a similar bill in the last session of the Congress (S. 2337) which was reported favorably by the Committee on the Judiciary and passed by the Senate. However, this action was too late to obtain any consideration by the House.

On January 27 I received information from Mr. Jose Alvarez that, due to the illness of his wife, it became necessary for him for health reasons to send her and his baby girl to Spain where they could be cared for by his mother. Mr. Alvarez has left Miami, Fla., to join his wife and child, and his present address is Fernandez Latorre 130–2do., La Coruna, Espana. It is his hope that after his wife has regained her health that he will be able to send them back to the States and also to be able to be admitted with them on a permanent visa.

In view of the above circumstances, I would appreciate it if you would see to it that the bill I introduced and referred to above, is amended accordingly.

Thanking you and with kindest personal regards, I am

Sincerely,

GEORGE SMATHERS, *United States Senator.*

JULY 21, 1953.

Senator GEORGE SMATHERS,
Senate House Building, Washington, D. C.

DEAR SENATOR SMATHERS: I am going to answer your letter of July 17, as accurately as possible, giving you details of my life with the help of some records I keep.

I was born in Habana, Cuba, March 14, 1927. Being about 3 years old, my mother, Mrs. Maria Flores (Mrs. Alvarez, Sr.) took me over to Spain where we spent some time. In the meantime, my father, Mr. Nicanor Alvarez, stayed in Habana due to the fact that he was partner-owner of a store and was not able to go over with us. Months later, my mother and I went back to Habana to join my father and since then we remained all together.

In 1933 we went to Spain to live there—in that time I was 6 years old—so I grew and was educated over there. Being 21 years of age I left Spain and went to Cuba, where I stayed about 6 months, going later to Maracaibo, Venezuela, S. A., where I stayed about 2½ years.

On June 10, 1951, I got married to Mrs. Alvarez, by proxy, after knowing each other during 7 years. My father over in Spain was the one who represented me as at that time I was in Venezuela. My wife, Mrs. Alvarez, left Spain and came to the United States where she was born and where we intended to make our

home and raise our family. As my work in Venezuela did not permit me to come here at the same time that she did, I arrived in the States a few days later, entering at the Miami Airport on July 23. (I am not very sure of this date, as my records are not clear.) I spent a couple of days in Miami, due to the fact I was not able to get ticket for New York.

On July 26 I got my ticket, so I went to New York where my wife and her family were expecting me. I arrived at New Jersey Airport on July 27 at 2 a. m. and we went to the Hotel Chesterfield in New York where we stayed during 4 days. On July 31, we rented an apartment at 46 West 62d Street, New York, N. Y.

The following month Mrs. Alvarez became ill and our troubles began. The money we had for our first needs was all spent in her doctor and medicine bills. As she was the only one permitted to work—because of my visitor's visa I was not able—she did it forgetting her bad condition; however, expenses were bigger than collections, so I felt like a guilty person, ashamed of myself not being able to take care of my wife and give her the care she needed so badly.

Not wanting her to go under the welfare's care, I went to the immigration office in Columbus Circle, New York, asking them to advise me what to do. After explaining my situation to the lady-officer, she told me that I was not permitted to work with a visitor's visa, but being my situation as it was, she advised me (personal advise, without any proof) to work, assuring me that I will not find any trouble in the future if I was able to show that the illness of my wife pushed me to do it, so I went out to work, trying my best to help the situation.

I was not a steady worker, not because I did not have the chance, but I was afraid that this will being me trouble. It seemed something inside of me was telling me that I was not doing the right thing, although I knew I was doing the right thing every good husband would do. For this reason, I worked a couple of days here and a couple of days there, trying only to make a few dollars to mitigate the situation. In those days my former boss in Venezuela was here and he offered me a good job, knowing my situation, so I went to work for the Lummus Co. in Bayonne, N. J., on a Government project. As they only permitted citizens to work, my boss wanted to ask permission of Washington for me to work but I refused him to do so, as I thought that maybe this will bring him some trouble. Thinking that not being a citizen and working for a Government project was something against the law, I refused to work with him.

Being my visa was good till late December 1951 and wanting to spend Christmas with my wife, I asked for an extension, which was given to me. In this extension is where I made the statement that I have never worked during my stay here. I made the statement not knowing that it meant so much to the laws of immigration and ignoring it was going to put me into trouble. I left the States before my visa ended as I was anxious to come back with my residence and to be able to help my wife in everything she needed.

On February 14, 1953, I entered the United States by the port of Miami, then I was asked if I ever worked in the States and I said the truth, so I was arrested and sent to the Hotel Belfort. The following day I went before a jury of the immigration where I had an interrogation. You can imagine how I felt in that moment. I was so depressed that I did not even have the strength to think clearly. I was worry about my situation, my wife and the future and thought the best way to get out of it was to accept all the suggestions they made. I did not have anyone to advise me. The jury asked me if I wanted a lawyer, and I told them I would like to have one but my money situation did not permit me to have it, so they continued the hearing with me alone. If I had had then a lawyer, I am sure that with his advice nothing will have happened and at the present time we could be living peacefully and not worrying about the future as we are now.

I forgot to tell you that the Immigration Office in New York did not recognize our marriage by proxy, so we were remarried in New York, as soon as they told us that marriage by proxy was not legal in the State of New York.

The places where I was resident are as follows:

Habana, Cuba: From 1927 to 1933. (Between these years I made a trip to Spain with my mother. I have no exact dates.)

La Coruña, Spain: From 1933 to October 9, 1948, Fernandez Latorre Street, No. 130, second floor.

Habana, Cuba: From November 6, 1948, to March 22, 1949, 64 Carvajal Street, Apartment No. 1.

Caracas, Venezuela: From March 23 to 24, 1949, Hotel Nacional.

Maracaibo, Venezuela: From March 25, 1949, to July 23, 1951, and my addresses were as follows: Hotel Principal, from March 25 to 31, 1949; 233 Independencia Street, from April 1 to October 30, 1949; 18 Urquinaona Street, Quinta Adela, from November 1, 1949, to September 30, 1950; Avenida 5 de Julio, Quinta Josefina, from October 1, 1950, to July 23, 1951.

Miami, Fla.: From July 23, to 26, 1951, Hotel Royalton.

New York, N. Y.: From July 27, 1951, to January 5, 1952, addresses as follows: Hotel Chesterfield, from July 27 to 30, 1951; 46 West 62d Street, Apartment 4C, from July 31 to September 30, 1951; 161 President Street, Brooklyn, N. Y., from October 1, 1951, to January 5, 1952.

Habana, Cuba: From January 5 to February 14, 1952, Hotel Cuba Moderna, 804 Monte Street.

Miami, Fla.: From February 14, 1952, up to date. Addresses as follows: Hotel Belfort, from February 14, 1952, to July 18, 1953; 151 Northeast 5th Street, Apartment 22, from July 19, 1952, to July 18, 1953; 2938, Southwest 24th Street, from July 19 up to date.

The list of places where I worked are as follows:

La Coruña Bank, La Coruña, Spain: From May 15, 1944, to October 9, 1948. I was an officer of second class and I worked most of the departments of this institution, principally in the accounting department of the main office. I resigned this job to go to Cuba and they gave to me a leave of absence of 3 years.

Bosch Carrio & Co., 208–210 Muralla Street, Habana, Cuba: From November 1948 to January 1949. I worked as an all-around boy. This was a very hard job and I was not able to carry on big weights, so my work was not satisfactory and I was fired. I tried to get a job according to my aptitudes but the employment situation in Habana was so bad I decided to go to Venezuela, which I did.

Commercial Bank of Maracaibo, Maracaibo, Venezuela: From March 26 to September 15, 1949. I resigned this job to get another better paid one with the Lummus Co. In this bank institution I worked for the auditing department.

The Lummis Co., care of Shell Caribbean Petroleum Co., Maracaibo, Venezuela: From September 1949 to July 23, 1951, I worked as a first-class clerk for the industrial relations department and later on I occupied the position of assistant to industrial relations chief. I finished this job at the end of the company's project and then I came to the States to join my wife.

On July 1952 when I got permission from the Federal court in Miami to go to work. I was hired by the Hotel Leamington, 307 Northeast First Street, Miami, Fla., as auditor and up do date I remain in the same position.

My studies were as follows:

Between years 1927 and 1933 I had kindergarten at a private school in Habana.

Between years 1933 and 1939 I had various grade schools (I must remark that school grades in Spain are different to those in the States and they take longer) in La Coruña, Spain, at the following places: Cervantes College (general education), Mendez Academy (general education), Cabanillas College (genderal education).

From the year 1939 to the year 1943, I studied business administration and I passed examination of the following segments: Arithmetic and geometry, universal history, history of Spain, civil law, grammar, geometrical drawing, caligraphy, shorthand, universal geography, geography of Spain, science and chemistry, human body science, political economy, algebra, calculations, accounting, French, English, and a few things I cannot remember now.

Between 1943 and 1944 I got an accounting degree.

At the present time I am studying civil engineering with the International Correspondence Schools, Scranton, Pa., and I hope that I will get my degree in the future.

The only time in my life I was arrested was by the immigration authorities in Miami in my arrival here February 14, 1952.

The above is all the story of my life in a short way. I think that this will help you to get my bill passed by the Congress. All are true facts to the best of my belief. I have nothing to be ashamed of because all my life I tried to do my best. If there is anything you would like to know or you would like to clear up, please let me know.

I hope to have the pleasure of meeting you and thanking you for all your kindness to me.

Sincerely yours,

JOSE ALVAREZE.

P. S.—My new address: J. Alvarez, 2938 Southwest 24th Street, Miami, Fla. I am enclosing some copies of letters that you may appreciate. I will look over my papers to see if there is something else.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 421), as amended, should be enacted.

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Calendar No. 1144

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1132

LIESELOTTE EMILIE DAILEY

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1105]

The Committee on the Judiciary, to which was referred the bill (S. 1105) for the relief of Mrs. Lieselotte Emilie Dailey, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On line 9, change the word "have" to "has".

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to the conviction of crimes involving moral turpitude in behalf of the wife of a citizen of the United States and former member of our Armed Forces.

STATEMENT OF FACTS

The beneficiary of the bill is a 28-year-old native and citizen of Germany who married a United States citizen October 12, 1952. She resides in Germany with their 4-year-old United States citizen son. The husband is presently employed by the United States postal service and resides in Chicago, Ill. The beneficiary was convicted July 2, 1946, for theft and was given a 6-week sentence. She was convicted May 20, 1947, for embezzlement and was given a 3-week sentence. Without the waiver provided for in the bill, she will be unable to enter the United States to join her husband and make a home for their child.

A letter, with attached memorandum, dated June 9, 1955, to the chairman of the Senate Committee on the Judiciary from the Com-

missioner of the Immigration and Naturalization Service with reference to the bill, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., June 9, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 1105) for the relief of Mrs. Lieselotte Emilie Dailey, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Chicago, Ill., office of this Service, which has custody of those files.

The bill would waive the provisions of the Immigration and Nationality Act relating to the exclusion of aliens who admit the commission or have been convicted of a crime involving moral turpitude and would permit the beneficiary to enter the United States for permanent residence if she is found otherwise admissible, provided that the waiver shall apply only to the ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of this act.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE MRS. LIESELOTTE EMILIE DAILEY, BENEFICIARY OF S. 1105

Mrs. Lieselotte Emilie Dailey was born on June 1, 1927, at Gelsenkircen, Ruhr, Germany. She is a citizen of Germany. The beneficiary married Maurice Craig Dailey in Germany on October 12, 1952. They have one child, Melvin Craig Dailey, born at Rottbitz, Germany, in 1951. The child is registered with the United States consul, Frankfort, Germany, as a United States citizen. The beneficiary and her son reside at 29 Grabenstrasse, Rheinbreithbach, Honnef, Germany. She is unemployed, owns no property, and is entirely dependent on her husband for support. Her father resides at Gelsenkircen, Germany. Her mother is deceased. The beneficiary has no close relatives in the United States other than her husband. She has never been in the United States.

Mr. Maurice Craig Dailey, sponsor of the bill, furnished the foregoing information. He could furnish no further pertinent information. Mr. Dailey was born in Jefferson County, Iowa, on October 1, 1928. He enlisted in the United States Army in January 1946 and served in the European theater until his discharge at Berlin, Germany, on May 19, 1949. Upon his discharge he became a civil-service courier and later administrative assistant for the Department of State in Germany until April 30, 1953. Mr. Dailey is presently employed by the United States postal service and resides at 522 Wrightwood Avenue, Chicago, Ill. He stated that he owns no property and has no assets but is supporting his wife and child abroad.

Mr. Dailey alleges that he has no knowledge of any act that has caused his wife to become ineligible to receive a visa. He was advised by the American consul at Frankfort, Germany, on March 3, 1954, that his wife was refused a visa as she falls within the provisions of the Immigration and Nationality Act relating to the exclusion of aliens who admit the commission of or conviction for a crime or crimes involving moral turpitude. Under the circumstances, the committee may wish to communicate with the Visa Office of the Department of State for further information.

Mrs. Dailey was also the beneficiary of H. R. 9332, 83d Congress, on which bill the Congress took no action.

A letter dated April 9, 1954, to Senator Thomas E. Martin from the American consul general in Germany reads as follows:

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN CONSULATE GENERAL,
Frankfort of the Main, Germany, April 9, 1954.

The Honorable THOS. E. MARTIN,
House of Representatives.

MY DEAR MR. MARTIN: I acknowledge the receipt of your letter of March 27, 1954, requesting information on behalf of your constituent, Mr. Maurice Craig

Dailey of Route No. 3, Fairfield, Iowa, regarding the immigrant visa application of his wife, Mrs. Lieselotte Dailey, Aegidienberg/Siegkreis, Germany.

The dossier of Mrs. Dailey indicates that she is the beneficiary of an approved petition executed by her husband which accords her nonquota status as the alien wife of an American citizen. Customary security investigations initiated with regard to Mrs. Dailey's application for a visa reveal that she was convicted on July 2, 1946, for theft and on May 20, 1947, for embezzlement by the district court at Bremen. Since theft and embezzlement have been held to involve moral turpitude, Mrs. Dailey is inadmissible to the United States under section 212 (a) (9) of the Immigration and Nationality Act.

Section 212 (a) (9) of the aforementioned act provides, in essence, that aliens who have been convicted of or who admit the commission of a crime involving moral turpitude shall be excluded from the United States, except that aliens who have committed only one such crime while under the age of 18 years may be granted a visa and admitted if the crime was committed and any imprisonment resulting therefrom ended more than 5 years prior to the date of application for a visa. Since Mrs. Dailey was over the age of 18 when the crime was committed, she does not come under the category of persons excepted from the excluding provision of the aforementioned section.

You may be sure that in reaching a decision with regard to Mrs. Dailey, the consulate general accorded her every consideration consistent with the existing immigration law and regulations.

Sincerely yours,

C. MONTAGU PIGOTT,
American Consul General.

Senator Thomas E. Martin, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

CHICAGO, ILL., *May 1, 1955.*

Senator THOMAS A. MARTIN,
Senate Office Building, Washington, D. C.

DEAR SENATOR: I wish to inquire of what progress is being made concerning the bill that you introduced in the Senate. The bill was for the relief of Lieselotte Emilie Dailey. The late Mr. Leo Thoma, of Fairfield, Iowa, wrote you concerning the status of my wife and the difficulties that I have had.

I received a letter the latter part of March, asking me to appear at the Department of Justice office in Chicago. They asked a few questions and said they would send the papers back to Washington right away. That is the last I have heard on the subject.

The situation has me in a go-between state of mind as I can't make any future plans. When I left Europe in April 1953, the American consulate general in Frankfurt, Germany, stated that it shouldn't take over 8 weeks for her papers to be finished. I made the necessary arrangements for the boy's passport and thought everything was taken care of. Approximately a year later I received a letter from the Department of State, Washington, D. C., saying that she couldn't be granted a visa for entry into the United States, unless a special bill was passed by the House or Senate. I took the liberty of writing them three different times as to the reason for such a statement. My letters still remain unanswered.

I would certainly appreciate any information that you can give me on this matter. If there is any questions that I can answer to help this along, I will gladly do so.

Thanking you for your time and attention that you have given me.

Sincerely,

MAURICE C. DAILEY, *Fairfield, Iowa.*

THOMA & THOMA,
Fairfield, Iowa, February 4, 1955.

Senator THOMAS A. MARTIN,
Senate Office Building, Washington, D. C.

DEAR TOM: I want to again call your attention to the situation involving Maurice Craig Dailey, R. F. D. No. 3, Fairfield, Iowa.

After Maurice has served with the Armed Forces in Europe, he became an employee of the State Department in West Germany. While so employed, he

married a German girl. Her name after marriage is Lieselotte Emilie Dailey. To this union there was born 1 child, a boy, now about 3 years of age. Mr. Dailey was returned to the United States and ever since such return has been making every effort to have his wife and son admitted to permanent residence with him in this country. Last year I wrote you in reference to this case and you did, on May 25, 1954, introduce a bill in the House of Representatives for relief of Mrs. Dailey. The Daileys have heard nothing further about this bill or its fate before the Congress, nor have they been able to get any satisfactory word from the Immigration and Naturalization Service of the Department of Justice.

It does seem to me that there is something that could be done to enable this family to be reunited here in this land of the free. Will you not be good enough to review your former efforts on behalf of these folks and then see if something cannot be done to assist in permitting this wife and child to enter the United States for permanent residence and join the husband and father here in this country. I certainly will appreciate anything at all that you can do to aid in this matter.

Thanking you for your attention to the matter and with kindest regards to Mrs. Martin and yourself, I am

Sincerely,

LEO D. THOMA.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1105), as amended, should be enacted.

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Calendar No. 1145

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1133

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EDITH KALWIES

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1787]

The Committee on the Judiciary, to which was referred the bill (S. 1787) for the relief of Edith Kalwies, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 2, line 1, change the colon to a comma and insert the following:

under such conditions and controls which the Attorney General, after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who is afflicted with tuberculosis in behalf of the fiance of a United States citizen. The bill also enables the fiance to enter the United States in order that she may marry her citizen fiance and thereafter reside in the United States.

STATEMENT OF FACTS

The beneficiary of the bill is a 24-year-old native and citizen of Germany who is the fiance of a United States citizen. She resides in Herne, Germany with her parents. The couple met in England where the beneficiary was enrolled as a student nurse and her fiance was stationed as a missionary. Shortly before the beneficiary completed her nurse's training, a routine medical examination showed she

had tuberculosis and she was immediately given medical treatment. The disease is now arrested.

A letter, with attached memorandum, dated June 24, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., June 24, 1955.

Hon. HARLEY M. KILGORE
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1787) for the relief of Edith Kalwies, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Los Angeles, Calif., office of this Service, which has custody of those files.

The bill would provide that the beneficiary shall be eligible for a visa as a nonimmigrant temporary visitor for a period of 3 months, notwithstanding her inadmissibility as an alien who is physically defective, and provided it is found she is coming to the United States with a bona fide intention of being married to William H. Crandall, her fiance. It would also require that a bond be deposited to insure that the alien shall not become a public charge. The bill would further provide that in the event the marriage does not occur within 3 months after the alien's entry, she shall be required to depart from the United States, and upon failure to do so, shall be deported in accordance with law. In the event the marriage shall occur within 3 months after the alien's entry, the bill would grant the alien the status of a permanent resident of the United States as of the date of the payment of the required visa fee.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE EDITH KALWIES, BENEFICIARY OF S. 1787

The beneficiary resides abroad. Mr. William Henderson Crandall, who is the fiance of the beneficiary, has furnished the following information:

Edith Kalwies was born at Wanne-Eickel, Germany, on August 24, 1930, and is a citizen of Germany. She is single and has no dependents. She resides at Riemkerster 23, Herne, Germany. Miss Kalwies is a nurse; however, she is not employed at present. She resides with, and is being supported by her parents. Her assets are not known. The beneficiary attended elementary and high school in Bavaria, and completed 2 years of student nurse training in Scotland. She has a sister, a lawful resident alien, residing in Salt Lake City, Utah, a brother residing in Canada and a brother residing in Ireland. Her parents, natives and citizens of Germany, presently reside at Herne, Germany.

William Henderson Crandall, the beneficiary's fiance, is a United States citizen. He was born at Glendale, Calif., on December 7, 1929. Mr. Crandall is single and has no dependents. He resides with his parents at 1640 Ardewin Avenue, Glendale, Calif. He is employed as an accountant by the city of Glendale, Calif., at a salary of $250 per month. His assets consist of savings in the amount of $1,200 and an automobile valued at $750. Mr. Crandall has testified that he met the beneficiary in England in 1952, during his tour of duty in that country as a missionary for the Latter Day Saints Church. He also has testified that the beneficiary was afflicted with tuberculosis but is now fully recovered.

Senator Arthur V. Watkins, the author of the bill, submitted the following letter in connection with the case:

UNITED STATES SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
July 5, 1965.

Hon. HARLEY M. KILGORE,
Chairman, Subcommittee on Immigration and Naturalization,
Senate Office Building, Washington, D. C.

DEAR HARLEY: In reference to S. 1787, which I introduced for the relief of Edith Kalwies, I would like to submit the following supporting information which I have obtained from letters from her fiance:

Mr. William H. Crandall, an American citizen, was stationed in England as a missionary from 1950 to 1952. At that time he met Miss Edith Kalwies, who was a German girl studying nursing in England. After Mr. Crandall returned to the United States he continued corresponding with Miss Kalwies and eventually the couple became engaged.

Shortly before Miss Kalwies completed her nurse's training a routine medical examination showed she had a small spot of TB on her right lung. She was immediately given medical treatment and her lung was collapsed. She has responded well to treatment; the disease is arrested; and she presents no danger of infecting anyone else.

This appears to be a worthy case and I would appreciate early action on it.

Sincerely,

ARTHUR V. WATKINS.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1787), as amended, should be enacted.

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Calendar No. 1146

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1134

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WINSTON BROS. CO., UTAH CONSTRUCTION CO., AND J. A. TERTELING & SONS, INC.

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1905]

The Committee on the Judiciary, to which was referred the bill (S.1905) for the relief of Winston Bros. Co., the Utah Construction Co., and the J. A. Terteling & Sons, Inc., having considered the same, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

AMENDMENT

Page 2, line 17, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to carry out the findings of the Court of Claims resulting from Senate Resolution 343 of the 82d Congress which referred to that court the bill S. 3326 for the relief of certain Midwest contractors.

STATEMENT

In the fall of 1947, Winston-Utah (a joint venture composed of Winston Bros. Co., a Minnesota corporation, and Utah Construction Co., a Utah corporation) and J. A. Terteling & Sons, Inc., an Idaho corporation, were engaged in the performance of contracts with the United States Bureau of Reclamation, Department of the Interior, for the construction of canals, siphons, dams, and other facilities relating to irrigation under the Columbia Basin project. These contractors were proceeding with the performance of their work under schedules and at rates of progress of their own choosing and calculated to complete the performance of their contracts within the required time.

In August of 1947 these contractors were told by representatives of the Bureau of Reclamation that Congress had not appropriated sufficient funds to permit the continuance of their work at an orderly and economic construction schedule and that the contractors would have to curtail their operations and slow down the work so as to fit or tailor the pace of their work to the amount of money allocated to each of them by the Bureau of Reclamation out of funds appropriated by Congress.

Both of these contractors did so curtail and slow down their operations which, of course, increased their costs of performance in many ways.

Several contractors performing work under contracts with the Bureau of Reclamation in the Central Valley of California had been faced with much the same situation and had been granted legislative relief by Congress by special appropriation included in the Interior Department Appropriation Act, 1950, 63 Statutes 765, at 782–783. These contractors in the Columbia Basin, having been hurt by substantially the same factual situation, applied to Congress for relief, resulting in the Senate of the United States referring the matter of these contractors' claims to the United States Court of Claims for report to Congress. This was accomplished by resolution of the Senate of the United States, approved June 27, 1952, Senate Resolution 343, Report 1872, 82d Congress, 2d session.

After extended and laborious trial in the Court of Claims, that court has now rendered its decision reporting to Congress pursuant to the above-referenced resolution. The majority of the court found that the contractors had no legal remedy against the United States, the dissenting opinion holding that the Government was legally liable to the contractors. However, the entire court has found and reported that Winston-Utah and Terteling suffered damages through no fault of their own and by reason of the insufficiency of appropriations by Congress, such damages having been found to be $102,475.41 in the case of Winston-Utah and $24,666.41 in the case of Terteling.

The substance of the majority decision of the Court of Claims in its report to Congress is as follows:

> The plaintiffs have no legal claim against the Government, they having released the Government from any such claim by section 11 of the specifications of their contracts. For the same reason they have no equitable claim in the sense of a claim enforceable in a court of equity. Two of the plaintiffs, Winston-Utah and Terteling, suffered damages in the amounts of $102,475.41 and $24,666.41, respectively, because they were obliged without fault on their part, on account of the insufficiency of the amounts appropriated by Congress, to curtail their operations under their contracts.

Thus, it is established that over 7 years ago these contractors were financially injured by reason of circumstances over which they had no control and without any fault on their part and were obliged, by reason of governmental action; namely, an insufficiency in the amount of funds appropriated by Congress, to incur and suffer damages and additional costs and expenses in the amounts above set forth. Under all of these circumstances it is believed that the Congress of the United States should make these contractors whole for those damages and additional costs and expenses so incurred and that legislation should be enacted to provide payment to Winston-Utah and Terteling in the amounts of such damages found by the Court of Claims to have been so incurred.

Attached hereto for the further information of the Senate is a copy of the opinion of the Court of Claims in this case.

IN THE UNITED STATES COURT OF CLAIMS

Congressional No. 6–52

(Decided April 5, 1955)

WINSTON BROS. COMPANY AND THE UTAH CONSTRUCTION COMPANY; ROY L. BAIR & COMPANY AND JAMES CRICK & SONS; J. A. TERTELING & SONS, INC.; AND T. E. CONNOLLY, INC. v. THE UNITED STATES

Mr. Garfield O. Anderson for plaintiffs. *Mr. Sherman E. Burt* was on the briefs. *Mr. John B. Miller*, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for defendant.

OPINION

MADDEN, *Judge*, delivered the opinion of the court:

This case has come to us pursuant to a Resolution of the Senate of the United States, approved June 27, 1952, Sen. Res. 343, Report 1872, 82nd Congress, 2d Sess. The Resolution states that there was pending in the Senate a bill, S. 3326, for the relief of certain construction firms, and this court was asked to proceed in accordance with sections 1492 and 2509 of title 28 of the United States Code and to report to the Senate in accordance with those statutory provisions.

The bill referred to in the Resolution proposed to pay to the plaintiffs certain sums as compensation for the increased costs incurred by them as a result of the disruption or delay in their construction work under contracts with the Bureau of Reclamation. The bill stated that the disruption or delay was caused by insufficiency of appropriated funds for payment of normal construction earnings.

Pursuant to the rules of this court, the plaintiffs filed a petition, the case was referred to a Commissioner of this court who held extensive hearings at places convenient to the parties. He made findings of fact, the parties took exception to certain of his findings, filed briefs and made oral arguments to the court.

Each of the four plaintiffs had a contract with the Government, which acted through the Bureau of Reclamation of the Department of the Interior. Each contract was for the construction of some facility intended to make the water impounded by the Grand Coulee Dam on the Columbia River in the State of Washington available for irrigation. The four plaintiffs, two of which were joint ventures, will be designated in this opinion as Winston, Bair-Crick, Terteling and Connolly. Winston was to construct two canals; Bair-Crick was to construct an earthern dam; Terteling was to construct an earthen dam and portions of a canal; and Connolly was to construct a tunnel and a "siphon". The period of performance of the contracts was 800 days as to two of them and 900 days as to the other two. All of them, therefore, contemplated work extending beyond the fiscal year in which the contracts were made, and into the fiscal years ending June 30, 1948, and June 30, 1949.

Each contract contained the following provision:

Specifications par. 11.

Failure of Congress to appropriate funds. If the operations of this contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the contractor hereby releases the Government from all liability due to the failure of Congress to make such appropriation.

The authority for the Bureau to make contracts which contemplated payments being made from funds not yet appropriated was contained in the following provision of 43 U. S. C. 388:

> When appropriations have been made for the commencement or continuation of construction or operation and maintenance of any project, the Secretary may, in connection with such construction or operation and maintenance, enter into contracts for miscellaneous services, for materials and supplies, as well as for construction which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriation being made therefor.

There were many other contracts, in addition to those of the plaintiffs, for construction in connection with the Columbia Basin Project. There were additional power units to be installed in the dam for the generation of electricity, there were pumps for the pumping plant to lift the water, impounded by the Grand Coulee Dam over to the reservoir from which it could be carried by gravity

to the some 400,000 acres of land which it was intended to irrigate. In making up its estimates in 1946 for the money which it would need to carry all these things forward in the fiscal year beginning on July 1, 1947, and ending on June 30, 1948, the Bureau of Reclamation arrived at a figure of $62,500,000. The Secretary of the Interior cut this figure back to $52,500,000. The Bureau of the Budget approved a figure of $27,500,000. The House of Representatives included less than half that amount in its bill; the Senate included a higher figure; the bill went to a Conference Committee which agreed to $17,500,000, and the bill containing that amount was enacted.

The Managers on the Part of the House of Representatives, in reporting the results of the Conference to the House, appended to the report of the Conference Committee the following statement:

> Realizing that repayment of construction cost is an essential part of the reclamation policy, and that a major portion of repayment of the cost of the Columbia Basin project must depend upon power revenues, the conferees are agreed that funds provided in the bill should be so allocated as to permit completion and installation of the six generators presently on order for this project at the earliest possible date.

This statement meant that there were ready cash customers for all the power that could be generated at the dam, and that the prompt installation of the additional generators, the manufacture and installation of which had been delayed by World War II, would be the quickest way to secure some additional income to offset the Government's vast expenditures on the Columbia Basin project. The irrigation facilities, on which the plaintiffs were working, would not, at best, have led to the receipt by the Government of any income until several years later.

The officials of the Bureau of Reclamation took the statement above quoted of the Managers on the Part of the House as law. While it was not in the Conference Report, it said that the conferees had agreed that that was the intention of the appropriation. There was, and is, no reason to doubt the truthfulness of the statement. In the circumstances it was the duty of the Bureau of Reclamation to respect the known intent of the responsible managers of the legislation.

The officials of the Bureau of Reclamation were faced, then, with the problem of how to use the appropriated funds which were not sufficient to permit the carrying on of the work contracted for, and at the same time pay for the maintenance of the Bureau's own organization, and for some materials not yet contracted for, but which were necessary, at that stage, for the orderly development of the project. Our finding 8 shows the allocation which the Bureau made. Even the expenditures directly related to, or incidental or necessary to the carrying out of the power programs, were cut back from $22,313,000 to $16,254,000. The balance of the money, including a carryover of nearly $4,000,000 from the preceding appropriation, was allocated as available for the continuation of the irrigation features of the project. But of this amount, $1,071,000 had, when the Bureau's allocation was made on August 8, 1947, already been covered by the estimates for the irrigation work done in July. The money for irrigation for the remaining eleven months of the 1948 fiscal year was only $4,015,000.

The irrigation contractors, including the four plaintiffs in this suit, would have required an estimated total of nearly $14,000,000 to have proceeded on full schedule for the remaining eleven months of the fiscal year. They would have required $7,393,000 to have continued on full schedule through January 1948. Consideration was given to that date because it was hoped that by February 1, Congress might have appropriated additional money for the project.

When the problem was considered in August, 1947, there were three ways in which the money allocated for irrigation might have been used. The contractors might have been authorized to proceed at regular speed, in which case the funds would have been exhausted in October. They might have been required to slow down to such a rate as would have distributed the reduced available funds over all the remaining months of the fiscal year. That would have tied up equipment and resulted in overhead expense disproportionate to accomplishments. The third possible method was to apportion the available funds for expenditure during the months ending with January 1948, thus permitting the contractors to maintain, to a considerable extent, their working organizations, and be ready to proceed at full schedule if Congress did, as it was hoped it would, appropriate the necessary funds by that time.

Mr. Banks, the District Manager of the Bureau, met with the irrigation contractors on August 12. He told them that if they could agree among themselves as to a proper apportionment of the funds under the third alternative the Bureau would adopt it. If that was done, the individual contractor would be permitted

to use up his money on whatever features of his work he chose. The contractors protested the fact that the appropriation was insufficient. They disagreed among themselves as to the allocation among them of the available funds. At later meetings, on August 14 and 16, adjustments were made in the tentative allocations to the individual contractors, and the contractors reluctantly agreed to the allocation to each contractor of a specified amount of the reduced funds. They did not waive their objection to the fact that they were not to be permitted to proceed on their regular schedules. The final allocation to the irrigation contractors was $1,430,000 more than the $4,015,000 which was thought to be available. The Bureau was able to make its payments under this increased schedule, from what source the record does not show. Perhaps there was a larger carryover from the preceding year than had been counted on; perhaps some of the contractors did not use up all of the funds allocated to them; perhaps the apparent deficit was made up out of the supplemental appropriation which became available in December, 1947, which was sooner than had been anticipated.

About September 1, 1947, Mr. Banks addressed to each of the irrigation contractors an "Order for Changes" which stated how much the contractor would be permitted to earn under the reduced schedule, and how many days his time for completion of his entire contract would be extended, because of the curtailment of funds. The proposed change orders were not accepted by any of the contractors. They protested that the extensions of time were insufficient, and that their rights to recover damages for delay in performance were not preserved. After discussion during the early part of September, extensions of time were fixed by the Bureau, in one case considerably greater than had been proposed in the September 1 letter. No further attempt seems to have been made to get the contractors to agree to formal change orders. On November 26, 1947, letters were written to the contractors extending their times for performance by the number of days which the Bureau had decided upon early in September, except in the one case noted above.

The plaintiffs, and presumably the other irrigation contractors, proceeded on the basis of their reduced allotment of funds. Congress reconvened during December, 1947, and by supplemental appropriations made sufficient funds available to permit resumption of full construction schedules on the irrigation contracts for the remainder of the fiscal year. On December 26, 1947, the Bureau by letter advised the contractors of that fact, but did not specify an amount which would be available to any particular contractor. On February 6, 1948, each contractor was advised of the amount available to it, an amount which would permit full scale operation for the balance of the year.

The plaintiffs assert that they did, in fact, curtail their operations because of the shortage of funds; that by reason of the curtailment their schedules were disrupted, their equipment was caused to stand idle, and their overhead expenses continued without their being able to obtain earnings proportionate to the overhead. They urge that the Bureau of Reclamation had no legal justification for curtailing their funds. They say that Congress' appropriation of $17,500,000, plus the carryover from the preceding year, was more than sufficient to keep the irrigation contracts going, if it had been used for that purpose, which, they say, it should have been. They base their argument that the appropriation, if insufficient for all the requirements of the Columbia Basin project, should have been used first for the irrigation features upon earlier legislation and one judicial decision. They cite the title to the original Reclamation Act of 1902, 32 Stat. 388, which named only irrigation as the objective of the Act. They cite the 1906 Amendment of the Reclamation Act, 34 Stat. 116, 117, Sec. 5, which first authorized the Secretary of the Interior, if the development of electric power was necessary for irrigation purposes, to lease any surplus power or power privilege, but said:

> *Provided*, that no lease shall be made of such surplus power or power privilege as will impair the efficiency of the irrigation project.

They cite *Burley Irr. Dist.* v. *Ickes*, D. C. Circ., 116 F. 2d 529, which cited and enforced the statutory provision quoted from the 1906 Act. They quote Sec. 2 of the 1935 Act authorizing the construction of the Grand Coulee Dam, 49 Stat. 1028, 1039, which mentions the generation of electric energy only "as a means of financially aiding and assisting" the flood control, navigation and irrigation features of the project. They point to the Reclamation Project Act of 1939, 53 Stat. 1187, 1195, which said:

> No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of

> the Secretary, it will not impair the efficiency of the project for irrigation purposes.

They show that the above language was incorporated by reference in the Columbia Basin Project Act of 1943, 57 Stat. 14. They quote a statement of the House of Representatives Committee on the Interior Department Appropriation Bill of 1949, as follows:

> *Statement of policy.*—The committee desires to reemphasize its statement in former reports on the bill, that the reclaiming of arid lands by the construction of reclamation projects is and always has been the primary purpose of the reclamation laws. Development of hydroelectric power is incidental to irrigation and is made as a means of financially aiding and assisting such undertakings. This policy should not be departed from without specific legislation by the Congress.

The plaintiffs argue, from the premises above recited, that the officials of the Bureau of Reclamation were required by law to allot the limited funds which they were given to irrigation work rather than to power work. We do not agree. The specific intention of the Congress which made the 1948 appropriation, or at least of the conferees who finally agreed, for their respective bodies, to the appropriation, was officially made known to the Bureau by the statement of the House Managers. If that intention was a departure from a previous long standing policy of Congress, it was no worse for that, as Congress of course had the power to change that policy at its will. Perhaps the statement of the House Committee on the 1949 bill was an expression of regret that there had been a lapse from the policy in the 1948 Act. We think that the Bureau was legally justified in giving the preference that it did to the power features of the project. We also think that Congress would not have intended that the Bureau should make cuts much deeper than it did make in its permanent staff and expenses in its Denver office and its regional office, or in its wage board payrolls for work on force account. Any further saving which would have been of substantial benefit to the irrigation contractors would seem to have required the substantial disruption of the Bureau's permanent organization and, as we have said, we think Congress would not have intended that.

Assuming, then, that the Bureau's allotment between power and irrigation was lawful, we reach the Government's defense that it was not a breach of contract for the Government to fail to make funds available to pay for work for which it had contracted. The Government bases this defense upon the provision of the contracts which we have quoted earlier in this opinion. That provision, Paragraph 11 of the Specifications, said that if the operations of the contract extended beyond the current fiscal year, the Government would not be liable for the consequences of the failure of Congress to appropriate funds to carry out the contract.

The plaintiffs urge that this provision is no defense. They point to the language "In case such appropriation as may be necessary to carry out this contract is not made * * *", and say that, taking each plaintiff's contract by itself, there was plenty of money appropriated to carry it out, even after giving the preference to the power features of the project. We think that this is a too literal reading of Paragraph 11. It would make the provision practically inapplicable except in cases where specific parts of appropriations were earmarked for particular contracts. We think the provision at least means that where the agency authorized to spend the appropriation allocates the funds on a rational and non-discriminatory basis and they prove insufficient, the Government is not liable for harm resulting from the shortage.

From what we have said it follows that in our opinion the contractual provision forecloses the plaintiffs from having any judicially enforceable claim against the United States.

We have, however, considered the facts of the case with a view to informing the Senate as to the amount of the damage which, in our view, the several plaintiffs suffered because of the insufficiency of the appropriated funds.

WINSTON-UTAH CLAIM

The plaintiff Winston-Utah had two contracts, one for the "West Canal" and the other for the "East Low Canal". A detailed recital of the facts concerning this plaintiff's claim is given in findings 18 to 31. By the end of July 1947 the West Canal was ready for concrete lining and for the construction of the two appurtenant concrete siphons. All this work was planned to be completed in the fall of 1947. Work on one of the siphons was discontinued on September 4 at which time eleven sections of the siphon were completed. This work would have, but for the shortage of funds, continued until November 8, at which time the

plaintiff would have closed down all concrete work, in any event. The plaintiff lost 2.2 months of time on that siphon. No concrete lining on the West Canal was done that fall. The specially made equipment for that work was not delivered until September and it could not have been assembled and ready for operation before September 22. The plaintiff lost 1.7 months on that work. In substantially the same circumstances the plaintiff lost time amounting to 1.8 months on the siphons for the East Low Canal. The plaintiff did not curtail any of its operations until September 4, and it did not curtail excavation in the East Low Canal at any time, this excavation work being continued through the winter. Mathematically it works out, as shown in our findings, that the plaintiff's work was slowed down by 79.4% during the period September 4 to November 8. We have applied this percentage to the plaintiff's fixed charges. As to its equipment, made idle by the curtailment of funds, the plaintiff in filing its claim with the Bureau of Reclamation used a formula which we are not familiar with, and which seems to us to give inadequate compensation. We have applied our usual formula to this item, eliminating however items already covered in the schedule of fixed charges.

Because of the shut-down of concrete work in September 1947 the plaintiff in order to get that work started as soon as the weather was suitable in 1948, set up its concreting equipment in February and March 1948. There was a considerable loss of efficiency of labor on account of the season, and we have made an allowance for that. We have also made allowances for a part of the cost of additional equipment purchased in 1948 partly to make up for time lost during the curtailment, and for increased costs of cement and carpenters' wages in 1948 over 1947. Our computation gives us a total figure of damages suffered by Winston-Utah of $102,475.41.

TERTELING CLAIM

Terteling had two contracts, one for the construction of Long Lake Dam and one for the construction of a part of the Main Canal. When funds were curtailed, it elected to continue full scale operations on its Main Canal contract. It did so continue, and makes no claim on account of that contract. As to the Long Lake Dam work, our findings 34 to 44 show the facts as we have found them and they will not be repeated in this opinion. Before the curtailment of funds the plaintiff was substantially behind schedule on many items of its contract. To do the work practically and economically it had to be done in a fairly definite sequence and if some key items were behind schedule, other items could not be proceeded with. Also for several weeks after the curtailment of funds had occurred, the plaintiff worked more man-hours than it had done before the curtailment. However, after October 31, 1947, work was slowed down. The plaintiff claims that it would have done concreting work after that date if funds had been available to pay for the work. If such work had been done in the winter, the plaintiff would have been subjected to extra expense for heating the water and aggregate, protecting the concrete after it was poured, and for the general inefficiency of labor in winter weather.

We have concluded that the plaintiff Terteling was subjected to some delay and some extra expense because of the curtailment of funds, and have included the expense of moving some equipment, the loss resulting from idle equipment and some overhead expense, the total amounting to $24,666.41.

CONNOLLY CLAIM

The facts with regard to the Connolly claim are detailed in findings 45 to 57. Before the curtailment of funds occurred, the plaintiff was already far behind its schedule. It had made a revised schedule on July 8, 1947, which might possibly have permitted it to finish its work on time. To have maintained that schedule would have put the plaintiff to very large extra expense for placing concrete in winter, and for the inefficiency of labor in winter work. But for late completion the plaintiff would have been subject to liquidated damages of $500 per day, hence it might have been willing to undergo the extra expense of the winter work.

The principal item of Connolly work was the Bacon Tunnel. The original plan was to work from both the north and the south ends of the proposed tunnel simultaneously. It was planned to first make a small tunnel from each end and, when these two had met, draw back to each end and start excavating to the full dimensions of the tunnel. Excavation of the small, or "pilot" tunnel was commenced from the south end in December 1946 and from the north end in April 1947. Theoretically, by working from both ends, the tunnel could be driven in half the time it would take if worked from only one end. But in fact, the work

from the south end went badly. The terrain over which the excavated materials had to be moved was bad, the elevation was unfavorable, and the plaintiff's ventilating equipment for purifying the air in the pilot tunnel after blasting worked badly, causing loss of working time. When the plaintiff on August 18, 1947, immediately after the discussions about the curtailment of funds, closed down the operation from the south end of the tunnel, we think it did what it had wanted to do for some time and had only refrained from doing because of the danger of subjecting itself to heavy liquidated damages for late completion. The shortage of funds discussion had assured the plaintiff of a generous extension of time for completion and relieved it of the pressure to continue inefficient and expensive operation just to gain time.

Our conclusion with regard to the Connolly claim is that, taking into account the accompanying extension of time, this plaintiff was not harmed by the shortage of funds.

BAIR-CRICK CLAIM

The plaintiff Bair-Crick had a contract for the construction of the South Coulee Dam and appurtenant works. This dam was to form the south end of the balancing reservoir 30 miles long into which water was to be pumped from the Grand Coulee Dam, and from which reservoir water was to be taken for irrigation. The South Coulee Dam was 9,900 feet long made of earth and rock fill with a concrete core some 30 feet wide. The details with regard to this plaintiff's work are given in findings 59 to 67. In the fall of 1946 the plaintiff submitted a proposed construction program. By July 1947 the work was several months behind schedule. In July an estimate of this plaintiff's anticipated earnings for the period July 1947 through June 1948 was prepared by the Bureau at the plaintiff's request, and was approved by the plaintiff as prepared. It showed estimated earnings for the months of August 1947 through January 1948, the months during which the curtailment of funds was in effect, of somewhat less than this plaintiff actually earned and was paid during those months. Since the July estimate was prepared before there was any thought of reduced funds or operations, it is apparent that the reduction of funds did not cause the plaintiff to curtail its operations during the pertinent period. If the plaintiff did curtail its operations thereafter, it was because it obtained, in connection with the funds negotiation, an extension of time for completion which removed the danger of its being charged with liquidated damages for late completion.

Sparling Steel Company was a subcontractor with Connolly and Bair-Crick, furnishing steel to them for their contracts. It claims to have been damaged by their delay in accepting steel from it. Since we have found that neither Connolly or Bair-Crick was delayed by the reduction of funds, it follows that Sparling's derivative claim has no basis.

It has been urged on behalf of all the plaintiffs that the extensions of time granted them by the Bureau of Reclamation prove conclusively, or almost conclusively, that they were in fact delayed in their performance for the periods named in the extensions of time. It will be remembered that Mr. Banks of the Bureau first fixed upon the periods of extension before September 1, 1947, and notified the plaintiffs by letters of that date. Because the plaintiffs refused to accept the change orders embodied in those letters, there were no further letters about extensions of time until November 26, 1947, when Mr. Banks again wrote the plaintiffs, unilaterally granting them the extensions of time which he had named on September 1 in the proposed change orders. The only exception to this was in the case of Connolly which had persuaded Mr. Banks to increase its extension from 146 days to 365 days. Estimates made when the curtailment of operations had just begun, on contracts which originally had 800 or 900 days to run, were of course largely guesswork. Banks and the Bureau were embarrassed at having, apparently for the first time, contracted for work which Congress would not support by appropriations. Due to lack of funds, all work on the pumping plant, which was the key structure of the irrigation project, was discontinued. There was, therefore, no longer any urgency for the completion of the canals, siphons and dams which could not be used until the pumping plant was in operation. The Bureau could be and was generous with time. If, with the additional time available, the contractors chose to rearrange their work for greater efficiency and economy, that was to their advantage, and was not a harm resulting from the shortage of funds.

We treat extensions of time granted by contracting agencies on account of action or inaction by the Government as admissions against interest by the Government. That means that they are pieces of evidence in favor of the con-

tractor, to be weighed along with the other evidence as to how much delay was actually caused by the Government's action or inaction. When, as in the instant case, the other and more direct evidence is convincing, the admission involved in the extension of time is of little weight.

Our report to the Senate is as follows:

The plaintiffs have no legal claim against the Government, they having released the Government from any such claim by Section 11 of the Specifications of their contracts. For the same reason they have no equitable claim in the sense of a claim enforceable in a court of equity. Two of the plaintiffs, Winston-Utah and Terteling, suffered damages in the amounts of $102,475.41 and $24,666.41 respectively, because they were obliged without fault on their part, on account of the insufficiency of the amounts appropriated by Congress, to curtail their operations under their contracts.

LARAMORE, *Judge;* LITTLETON, *Judge;* and JONES, *Chief Judge,* concur.

WHITAKER, *Judge,* dissenting:

I seriously doubt the right of the Bureau of Reclamation to so allocate the funds appropriated as to prefer one class of contracts over another.

The House managers reported to the House that "the conferees were agreed" that the funds appropriated should be spent first for the completion and installation of the generators. This was reported to the House of Representatives and it may be said that by the adoption of the Conference Report that House gave its assent to such an allocation; but the Senate is not shown to have given such assent. This body did not have before it this statement of the House managers. It had before it only the Conference Report, and this was silent on the basis for the allocation of the funds.

It, of course, takes the concurrence of the two Houses of Congress to pass a bill. They concurred only on the basis of the Conference Report, which, as stated, was silent on allocation.

It, therefore, comes down to this: There were outstanding $37,359,000 construction and supply contracts and limited force account demands. To carry them on, $17,500,000 was appropriated. This appropriation, plus the unexpended balance carried over from the previous fiscal year, amounted to $21,617,000.

It seems to me the several contractors had a right to expect that this amount should be prorated among their several contracts. Since this was not done, I think the defendant is legally liable for the consequent delay.

It would have been otherwise if Congress had directed allocation to the power contracts first, but this was not done.

I, therefore, cannot agree to the report of the majority.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner Paul H. McMurray, and the briefs and argument of counsel, makes findings of fact as follows:

1. This case comes before the court pursuant to a Resolution of the Senate of the United States, approved June 27, 1952, S. Res. 343 (Report 1872), 82d Congress, 2d Session, which Resolution is as follows:

> *Resolved*, That the bill (S. 3326) for the relief of certain construction firms, now pending in the Senate, together with all the accompanying papers, is hereby referred to the United States Court of Claims, and the court shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28 of the United States Code and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally or equitably due from the United States to the claimants; *Provided, however*, That the passage of this resulotion shall not be construed as an interference of liability on the part of the Government of the United States.

Proposed Bill S. 3326, referred to in the foregoing Resolution, is in pertinent part as follows:

A BILL

For the relief of certain construction firms.

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise

appropriated, to Winston Brothers Company and The Utah Construction Company, jointly, the sum of $184,250.08; Roy L. Blair and Company and James Crick and Sons, jointly, the sum of $234,499.95; J. A. Terteling and Sons, Incorporated, the sum of $86,512.15; and T. E. Connolly, Incorporated, the sum of $779,622.79. The payment of such sums shall be in full satisfaction of all claims of such construction firms against the United States for compensation for increased costs incurred as a result of the disruption or delay of construction work schedules caused by insufficiency of appropriated funds for payment of normal construction earnings during the fiscal year ending June 30, 1948, under the following-numbered Bureau of Reclamation contracts: Winston Brothers Company and The Utah Construction Company, contracts numbered I2r–16197 and I2r–16796; Roy L. Bair and Company and James Crick and Sons, contract numbered I2r–16203; J. A. Terteling and Sons, Incorporated, contract numbered I2r–16745; and T. E. Connolly, Incorporated, contract numbered I2r–16311.

* * * * * * *

In reporting the Resolution the Senate Committee of the Judiciary stated *inter alia*:

> It is the view of the committee that the Columbia Basin contractors are possibly deserving of relief, but the facts and circumstances are of such complexity that the committee is unable to arrive at a fair and just determination. In these circumstances it is deemed particularly appropriate to utilize and apply those provisions of law providing for the referral of such cases to the Court of Claims, which in turn is equipped to make the necessary findings of fact and conclusions thereon sufficient to base informed action subsequently by the Congress.

2. The Columbia Basin Project is located along the Columbia River in Central Washington and consists of three major phases; a dam across the Columbia River at Grand Coulee, known as Coulee Dam; the generation of electrical power; and the irrigation of adjacent arid lands. The Project is under the administrative jurisdiction of the Bureau of Reclamation, Department of the Interior.

Actual work on the project commenced in 1933 and at the time of this country's declaration of war in December 1941, the Coulee Dam itself (exclusive of the power houses and the irrigation works) had been largely completed. The design of the dam called for two power houses situated one on the west and one on the east bank of the river. Each power house was designed to accommodate nine main power generating units of a rated capacity of 108,000 kilowatts each, or a total of 18 such units, plus three service units of 12,500 kilowatts each. The total rated capacity of both power houses was some 2,000,000 kilowatts of power when all units were installed and operating. Since the completion of the power houses there has been generated as much as 2,250,000 kilowatts of power.

At the beginning of the war, three of the main power units and one service unit had been installed in the west power house and six more main units were on order but work on the units on order was stopped by the War Production Board, pending further investigation of the need therefor in the light of wartime demands for labor and strategic materials. However, the shipbuilding program, the need for production of aluminum for airplane construction, power needed for the nearby Hanford atomic works, and other wartime activities in the Pacific Northwest made it imperative that additional electric power be supplied. As a result of this urgent demand, work on three of the main units on order, which had been previously stopped, was permitted to proceed. In addition two smaller units were borrowed from Shasta Dam in California. All of these units were installed in the west power house and put into service during the war period, making a total of eight main units and one service unit in the west power house, but none in the east power house.

3. At the beginning of World War II, construction work had not yet commenced on the irrigation phases of the project, and during the war years all irrigation work, except for some surveys and investigations, was suspended.

At the close of the war, a program for the irrigation of some 400,000 acres of land by 1950 or 1951 was planned. One of the objectives of such program was to provide employment and settlement opportunities for returning War Veterans. The irrigation required, as a first prerequisite, the installation of a pumping plant at the dam to be operated by the electricity there generated which would be capable of pumping water from the dam reservoir to an elevation of sufficient height to get it into a balancing reservoir formed in a prehistoric river bed or coulee known as Grand Coulee. The construction of two earth-filled dams some 25 miles apart at the coulee's north and south extremities would impound the water so pumped into

the balancing reservoir from which it would flow by gravity to the arid farm lands some 30 to 50 miles distant through a series of canals, tunnels, siphons, auxiliary dams, and other works. The key structure in the irrigation project was the pumping plant, without which the balancing reservoir and all of its gravity distribution works would remain dry. No work had been done in connection with construction of the pumping plant (except its foundations) or the manufacture and installation of the necessary pumps prior to the end of World War II.

4. The plan for early irrigation involved the expenditure of many millions of dollars and the immediate letting of numerous contracts including the manufacture of the pumps for the pumping plant, the construction of the balancing reservoir, canals, tunnels, siphons, auxiliary dams and other related works. Among the contracts so let were the contracts involved in this litigation.

Winston Bros. Company and The Utah Construction Company, a joint venture (hereinafter referred to as Winston-Utah) were awarded contracts for the construction of the "West Canal" and the "East Low Canal"; Roy L. Bair & Company and James Crick & Sons, a joint venture (hereinafter referred to as Bair-Crick) were awarded a contract for the construction of the dam at the southern extremity of the Grand Coulee known as "South Coulee Dam"; J. A. Terteling & Sons, Inc., (hereinafter referred to as Terteling) were awarded contracts for the construction of "Long Lake Dam," and portions of the main canal; and T. E. Connolly, Inc., (hereinafter referred to as Connolly) was awarded a contract for the construction of "Bacon Tunnel" and "Siphon". All of these undertakings were segments or portions of the planned gravity irrigation system. The aforesaid contracts were let in June and October 1946; those let in June were to be completed within 900 calendar days, and those let in October within 800 calendar days from time of receipt of notice to proceed. Under such a time schedule all work on such projects would have been completed in February and March of 1949.

5. Many contracts other than those of the plaintiffs here mentioned, as well as force account work, were contemplated or actually undertaken in 1946, such as the manufacture of additional power units, pumps for the pumping plant, the construction of conduits and canals from the pumping plant to the balancing reservoir, the construction of the north dam in the balancing reservoir, and many other associated works, requiring the expenditure of vast sums of money. In preparing estimates in the summer and fall of 1946 for the fiscal year July 1, 1947 to June 30, 1948, the Bureau originally estimated its requirements on the Columbia Basin Project at $62,500,000, which was cut back by the Secretary of the Interior to $52,500,000. The Bureau of the Budget thereafter made further drastic cuts but ultimately approved an estimate of $27,500,000. An appropriation of $17,500,000 for the entire Columbia Basin Project for the fiscal year 1948 was finally authorized by the Interior Department Appropriation Act of 1948, approved July 25, 1947.

6. Within a few months after the close of the war the demand for power, instead instead of falling off as had been anticipated, continued to increase and so continued until the present time with the result that power output at Coulee Dam has never kept abreast of the demand.

In the course of the passage of the bill making the appropriation for the Columbia Basin Project, the House of Representatives and the Senate included different amounts of money. It therefore became necessary that the bill go to a Conference Committee to resolve the disagreement. The Conference Committee agreed upon the figure of $17,500,000. In reporting the results of the Conference to the House of Representatives, the Managers on the Part of the House added to the Conference Committee Report the following statement:

> Realizing that repayment of construction cost is an essential part of the reclamation policy, and that a major portion of repayment of the cost of the Columbia Basin project must depend upon power revenues, the conferees are agreed that funds provided in the bill should be so allocated as to permit completion and installation of the six generators presently on order for this project at the earliest possible date.

This drastic reduction and the statement as to the use of the comparatively small amount available, caused the Bureau to undertake new planning and new programs, both for the contracts already let, as well as for those in contemplation, and was a matter of great concern among the Bureau officials as well as the contractors whose work was then in progress.

7. In order that existing construction and supply contracts and limited force account operations could proceed on schedule for the entire fiscal year of 1948 on the Columbia Basin Project a minimum total of $37,359,000 would have been required whereas, due to the reduced appropriations, there was estimated in

August 1947 to be only $21,340,000 available including an estimated unexpended balance of $3,840,000,[1] carried over from the previous fiscal year. A cut-back of $16,019,000 therefore had to be made.

On August 4, 1947, a press release explaining the then financial situation with respect to the Columbia Basin Project was issued by the Bureau, and on August 6 a copy of such release was sent by letter to each contractor on the project inviting them to a conference at the Bureau Office in Ephrata, Washington. A copy of the press release and a letter of invitation, received in evidence as Plaintiffs' Exhibit No. 2, are incorporated herein by reference.

8. On August 8, 1947, a statement was prepared by the Bureau for the Columbia Basin Project, entitled "Cut-Back From 'Restricted Program' to Basic Program Providing Priority for Power Installations F. Y. 1948." This statement was as follows:

Columbia Basin Project, Washington

	Restricted Program	Cut-Backs	Basic Program N
Wage Board Payrolls	$3,464,000	$1,435,000	$2,029,000
Per Annum Payrolls	2,249,000	305,000	1,944,000
Denver Office Charges	1,200,000	217,000	983,000
Regional Office Charges	180,000	5,000	175,000
Earnings Under Supply Specs (Existing Contracts)	9,845,000	3,273,000	6,572,000
Purchase Order Payments (Existing P/O)	2,028,000	392,000	1,636,000
Right of Way and Excess Land Purchases	800,000	7,000	807,000
Required Materials Not Yet Under Contract	1,450,000	364,000	1,0 6,000
Freight, Service Contracts, Travel, Per Diem, etc	725,000	75,000	650,000
Funds Required for Pasco Unit Contracts	372,000		372,000
Subtotal	22,313,000	6,059,000	16,254,000
July Payments	1,079,000	8,000	1,071,000
August through January	7,393,000	3,378,000	4,015,000
February through June	6,574,000	6,574,000	
Total	37,359,000	16,019,000	21,340,000

Funds available:	
F. Y. 1948 Appropriation	$17,500,000
Carryover from F. Y. 1947	3,840,000
Total Funds Available	21,340,000
Percentage of Restricted Construction Progress Required To Stay Within Available Funds	54.3%

COULEE DAM, WASHINGTON, *August 8, 1947.*

The first column of the statement down to the sub-total of $22,313,000 represented existing programs either directly related to, or incidental or necessary to the carrying out of the power programs. The three remaining items of $1,079,000, $7,393,000 and $6,574,000 in that column (a total of $15,046,000) showed the estimated amounts needed for each of the periods indicated so that existing contracts on the irrigation phase of the project, including the contracts here in suit, could proceed on schedule. The Bureau's interpretation of the required priority for the power program, so that it could continue throughout the remainder of the fiscal year, resulted in an allocation of $16,254,000 of the available funds for that purpose; $1,071,000 had already been obligated under the July 1947 estimates for the irrigation contracts so that of the total amount of $21,340,000 available only $4,015,000 [2] was left to carry on the irrigation contracts for the remaining eleven months of the fiscal year 1948. This sum of $4,015,000 represented all that remained after eliminating all projected construction not essential to the power program, including the pumping plant, feeder canals to balancing reservoir, machine shops, etc., as well as cutting back all other projected expenditures connected with the power program to the fullest extent possible consistent with what was interpreted as the intent of the Congress.

[1] In November 1947, when more accurate information was available, this carryover was found actually to be $4,117,000 instead of the estimated $3,840,000.

[2] This figure was later found to be $4,292,000 because of the increase of the 1947 fiscal year carryover from the $3,840,000 estimated in August to an annual $4,117,000 in November 1947.

The irrigation contractors, including these plaintiffs, would have required an estimated total of $13,967,000 to progress on full schedule for the eleven-month period from August 1947 to the end of the fiscal year June 30, 1948, and an estimated $7,393,000 to continue on full schedule for the six-month period from August 1947 through January 1948. It was hoped that when Congress reconvened in January additional appropriations could be obtained, but there was no reasonable prospect at that time that additional funds could be provided prior to February 1948. With only $4,015,000 available to carry on work requiring an estimated outlay of $7,393,000 for the next six-month period, the Bureau and the irrigation contractors were confronted with the alternative of proceeding with full scale operations until exhaustion of such funds in about October 1947, or curtailing the work so as to keep their respective earnings within available funds until more money was available. Such a shutdown and the consequent disruption of operations would have resulted in losses greater than would have been experienced by a slowdown or curtailment.

9. The $4,015,000 made available to the plaintiffs and other contractors involved in the Columbia Basin Project, as a result of the allocation of funds by the Bureau of Reclamation, represented about 54 percent of the estimated $7,393,000 required for full scale operations for the six-month period August 1947 through January 1948. An allocation was accordingly made to each of the irrigation contractors on the basis of approximately 54 percent of their respective estimated requirements for that period,[3] which allocation appears in the following schedule:

[3] The contractors' normal requirements for the six-month period upon which the above allocations were made, were based on estimates made by the resident engineers of the Bureau on the basis of information furnished by the respective contractors early in July 1947, before the reductions in appropriations had been made.

Columbia Basin project, Washington—Construction progress permitted by allocation of $4,015,000 for 6-month period August–January 1948

[Straight percentage basis]

		July actual	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Total Aug.-Jan.	Total July-Jan.
1231	South Coulee Dam	$183,000	$92,000	$73,000	$38,000	$32,000	$23,000	$23,000	$311,000	$494,000
1236-1-3	Main Canal, Sta. 24+00 to 430+00	50,000	49,000	59,000	65,000	46,000	38,000	22,000	279,000	329,000
1236-2	Bacon Tunnel and Siphon	71,000	85,000	86,000	98,000	98,000	98,000	109,000	574,000	645,000
1286	West Canal, Sta. 2+50 to 3+50	58,000	110,000	122,000	122,000	68,000	54,000	54,000	530,000	588,000
1400	Potholes Dam	527,000	293,000	293,000	269,000	171,000	122,000	122,000	1,270,000	1,797,000
1401	Long Lake Dam	65,000	69,000	88,000	88,000	73,000	68,000	68,000	454,000	519,000
1422	East Low Canal, Sta. 0+25 to 650+00	98,000	73,000	86,000	98,000	73,000	73,000	73,000	476,000	574,000
1475	Aggregates-Adrian Deposit	18,000	20,000	20,000	20,000	16,000	----------	----------	76,000	94,000
1780	Aggregates-Potholes Deposit	1,000	10,000	10,000	10,000	8,000	7,000	----------	45,000	46,000
	Total	1,071,000	801,000	837,000	838,000	585,000	483,000	471,000	4,015,000	5,086,000

The contracts listed in the schedule pertain to the respective plaintiffs herein as follows:
Bair-Crick, Specs. 1231, South Coulee Dam.
Terteling:
Specs. 1236–1–3, Main Canal, Stations 24+00 to 430+00.
Specs. 1401, Long Lake Dam.
Connolly, Specs. 1236–2, Bacon Tunnel and Siphon.
Winston-Utah:
Specs. 1286, West Canal, Stations 2+50 to 350+00.
Specs. 1422, East Low Canal, Stations 0+25 to 650+00.

The remaining contracts listed as 1400 Potholes Dam, 1475 Aggregates-Adrian Deposit and 1780 Aggregates-Potholes Deposit, relate to irrigation contracts other than those involved in this litigation. The Potholes Dam contract was held by Lytle, Amis & Greene and the two aggregate contracts for the furnishing of all aggregates for concrete on the other irrigation contracts were held by Green and Shotwell, respectively.

According to this schedule the suggested allocation to the four plaintiffs herein for the period August 1947–January 1948 was as follows:

Bair-Crick		$311,000
Connolly		574,000
Terteling:		
Main Canal	$279,000	
Long Lake Dam	454,000	
		733,000
Winston-Utah:		
West Canal	530,000	
East Low Canal	476,000	
		1,006,000

In the allotment of available funds between the power program on the one hand and the irrigation contracts on the other, as shown in the foregoing schedule, the record does not establish that the Bureau officials were arbitrary, capricious or acted in bad faith.

10. Each of the five contracts here involved contained in the specifications an identical provision as Paragraph 11 thereof, as follows:

> *Failure of Congress to appropriate funds.* If the operations of this contract extend beyond the current fiscal year [4] it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the contractor hereby releases the Government from all liability due to the failure of Congress to make such appropriation.

11. A meeting, presided over by Mr. F. A. Banks, District Manager of the Bureau of Reclamation, at which other interested Bureau personnel and representatives of each irrigation contractor, including the plaintiffs herein, were in attendance, convened at the Bureau offices in Ephrata, Washington, on August 12, 1947, pursuant to the invitation sent out on August 6th, as above related.

Copies of the two schedules of August 8, 1947, showing cutbacks and allotments set forth in finding 8, were delivered to each of the contractors' representatives either just prior to or at the time of the meeting and they were invited by Mr. Banks to discuss the funds situation and the best method of handling it. The contractors were informed by Mr. Banks that because of the limited appropriation, and the priority required for the power installation, there would be only $4,015,000 available for carrying on all of the irrigation contracts for the fiscal year 1948; that at the scheduled rate of progress the $4,015,000 would be exhausted in about October 1947 in which event all work would have to be suspended until additional funds were appropriated; that if, because of the problem involved, the contractors could agree among themselves to curtail their operations for the next six months so as to keep their respective earnings within that amount, Congress would be requested when it reconvened in January 1948 to appropriate additional funds so that full operations could be resumed; that thereby the contractors' disruption would be minimized and their organizations kept intact; that the amount then available could be divided among the respective contractors in such way as they might decide among themselves; and that the manner in which any allocation made to any particular contractor might be spent, and the particular features of his work upon which he might spend it, could be determined by the

[4] As shown above, the instant contracts were entered into in June and October 1946 and were scheduled for completion in February and March 1949.

individual contractors. Resentment was shown by the contractors and protests made with respect to the insufficiency of the appropriated funds allocated to the irrigation contracts and disagreement arose among them as to the extent to which each might share in the funds made available to them. Mr. Banks thereupon suggested that the contractors meet among themselves, try to mutually resolve these problems, agree upon a recommended program, and report back at a later date.

The contractors returned to discuss the matter informally with Mr. Banks at his office in Coulee Dam at various times during the day of August 14, 1947. At the August 14th discussions, Bair-Crick requested that its tentative allotment of $311,000 be increased to $650,000; Terteling asked for an increase from $733,000 to $1,466,000; Connolly an increase from $574,000 to $674,000; and Winston-Utah from $1,006,000 to $1,300,000. Lytle, Amis & Greene, which had the Potholes Dam contract Specs. No. 1400, and had been tentatively allocated $1,270,000 under the suggested allocation heretofore mentioned, requested an increase to $2,200,000. The aggregate contractors (Specifications Nos. 1475 and 1780) who had been tentatively allocated $121,000, requested an increase to $198,000. The available funds would not permit these increased allocations and the contractors were so informed.

A subsequent meeting was held in Ephrata on August 16th, 1947, at which time the program of each contractor was carefully gone over by the conferees in order to determine the minimum amount each required. At that time the contractors reluctantly agreed among themselves, with the qualified approval of Mr. Banks, that Bair-Crick's allotment could be increased from $311,000 to $650,000; Terteling's would remain at the amount of $733,000 originally proposed; Connolly could have an increase to $674,000, which was $100,000 over the original proposal; Winston-Utah's allotment would remain at $1,006,000, the amount originally proposed; Lytle, Amis & Greene's allotment would be increased from the original proposal of $1,270,000 to $2,200,000, an increase of $930,000; and the aggregate contractors were allotted $180,000, an increase of $59,000.

The final allocations were approximately $1,430,000 in excess of the $4,015,000 originally proposed and the contractors were told by Mr. Banks that they would be put down respectively for these amounts as their minimum requirements but that the Bureau at that time did not know from what source the excess could be obtained. So far as the evidence shows the Bureau was able to meet these increased allotments. This could be accounted for by the increase in carryover from 1947; by the fact that supplemental appropriations became available in December 1947 instead of January 1948, as had been anticipated; and by the fact that some of the contractors did not earn all funds respectively allocated during the curtailment period.

These final allocations were decided upon by agreement among the contractors in an effort to adjust their respective programs to the unsatisfactory situation confronting them through no fault of their own and to cooperate with the Bureau to the end that the work might conform as closely as possible to the limits of the funds allocated by the Bureau. Without some allocation in definite amounts to each contractor, some of the contractors were in a position to benefit at the expense of the others. The Potholes Dam, for example, had reached a point in construction where an accelerated construction schedule could have consumed the greater portion of the available money in a very short period of time while other contractors' earnings would necessarily be spread over longer periods due to the nature of the particular work then being performed.

The rate of progress already attained, the extent of completion and the condition of the work under the respective contracts in August 1947, rendered it impracticable to make the allocations to each individual contractor in strict accordance with any rigid formula applied uniformly to all. Lytle, Amis & Greene, for instance, needed to be assured of ample funds to bring the earth fill in their dam excavation to a height where winter and spring floods would not damage it and some $900,000 additional funds were allocated for that purpose. Terteling and Winston-Utah each had two contracts in progress which permitted them an election as to the contract on which normal operations would proceed and on which contract work would be curtailed. Connolly had only one contract but two separate items of construction were involved, one being tunnel construction and the other concrete siphon construction, thus permitting that contractor a choice of operations. Bair-Crick was granted an additional $100,000 under the condition that it continue to hold expenditures to a minimum and maintain only such construction operations as would permit it to retain the nucleus of their organization. All of the irrigation contractors here involved continued to operate in varying degrees during the entire fiscal year 1948.

12. The contractors were assured by Mr. Banks during the aforesaid meetings that appropriate extensions of time for completion of their respective contracts would be granted; but that for reimbursement of losses, if any, due to the slowdown or curtailment, the contractors would have to look to their respective contracts. He assured the contractors that their rights under such contracts would be respected. Mr. Banks stated to those in attendance that he would recommend that the extensions of time be effected by change orders indicating the funds allocated to the respective contractors. Mr. Banks' authority did not extend to the issuance of change orders, but, subsequent to the meetings, authority was granted him to negotiate with the respective contractors for suitable change orders on the condition that any such orders were not to become effective until approved by the Chief Engineer, who was the contracting officer.

On or about September 1, 1947, drafts of proposed change orders were prepared under Mr. Banks' direction and sent to each of the contractors for negotiation, of which the following relating to Winston-Utah is typical:

> The Congress by failing to appropriate sufficient funds to carry on the full amount of work under contract on the Columbia Basin Project has made it necessary to curtail your operations in connection with the construction of the portion of the West Canal covered by Specifications No. 1286.
>
> Therefore, pursuant to the provisions of Article 3 of the contract with you dated June 28, 1946, (Symbol I2R–16197) the following change is hereby ordered in the specifications:
>
> 1. In lieu of the provisions of paragraph 22 of Specifications No. 1286, regarding the commencement, prosecution and completion of the work, you are directed to curtail your construction operations in such manner that payments due you for work performed in the period from July 25, 1947, to January 25, 1948 [5] will not exceed $1,006,000.[6]
>
> Except as modified herein, all work shall be performed in accordance with the provisions of Specifications No. 1286 where these are applicable, as determined by the contracting officer, or otherwise as directed by the contracting officer.
>
> Adjustment of the amount due under the contract and/or in the time required for its performance by reason of this change will be made as follows:
>
> You will be paid for the items of work listed in the schedule of Specifications No. 1286 at the contract unit prices bid as though no change had been made;
>
> Since you are also performing work under contract (Symbol I2R–16796), Specifications No. 1422 for which funds are also curtailed you may, at your option perform work on that contract and be paid therefor at the contract unit prices bid in the schedule of Specifications No. 1422 up to the amount stated in this Order for changes provided that payments made for work performed under Specifications No. 1422 will correspondingly reduce the amount available for payment under this Order for Changes.[7]
>
> The time allowed for the completion of the work covered by Specifications No. 1286 will be extended 170 calendar days.[8]

The proposed change orders were not acceptable to any of the contractors and no such change orders were ever issued. The contractors' objections generally related to the extensions of time allowed and the failure of the proposed change orders to specifically state that the contractors' rights to recover damages for delay were reserved.

13. Although the specific delay to any particular contractor was impossible of ascertainment at that time, the contractors were interested in learning what extensions would be allowed so that they could replan and reschedule their operations and their construction programs. As above related, the new plan contemplated the suspension of all work on the pumping plant, which was the key structure in supplying water for irrigation so that the urgency which had theretofore existed in finishing the canals, siphons and auxiliary dams in time for the

[5] All estimates for monthly payment vouchers on each of the contracts covered the period from the 25th of one month to the 25th of the following month. Thus, the August 1947 pay voucher would be based on estimates of work accomplished during the period from July 25th to August 25th and in like manner as to each month work was performed.

[6] Each proposed order stated the amount finally allocated to each contractor as set forth in Finding 11.

[7] A similar paragraph did not appear in connection with Connolly and Bair-Crick since each had only one contract.

[8] See Finding 13 post for the basis on which extensions of time were computed under each of the contracts here involved and the additional time allowed.

previously planned distribution of the water to the farm lands had been greatly relieved. Liberal extensions of time were therefore made possible without interfering with the Government's irrigation program or causing other damage to the Government's program.

The specific amount of time for performance to be allowed each contractor had not been discussed during the meetings, but following the meetings, Mr. Banks gave his attention to that subject.

In the drafts of the proposed change orders referred to above, sent out about September 1, 1947, extensions of time were proposed as follows:

	Days
Winston-Utah:	
West Canal, Specs. No. 1286	170
East Low Canal, Specs. No. 1422	113
Terteling: Long Lake Dam, Specs. No. 1401	97
Connolly: Bacon Tunnel & Siphon, Specs. No. 1236	146
Bair-Crick: South Coulee Dam, Specs. No. 1231	75

The suggestions were based on estimates prepared by Mr. Banks and his staff during the period between August 16th and September 1, 1947, at which time no one knew, or could have known, the actual number of days of delay which might be encountered by each contractor as a result of their respective curtailed construction programs.

Because of the assurances given in the meetings that ample extensions of time would be allowed to replan and reschedule operations, the primary consideration in fixing the proposed time extensions was to enable each contractor to complete its contract or contracts without incurring liability for liquidated damages for delay, and in that respect allowances were made for the actual progress achieved, and delays already experienced which were unrelated to the curtailment program.

Some objections were made to the sufficiency of the proposed extensions. Winston-Utah at first thought it would be inadequate but later withdrew its objection when sufficient time to complete the work without incurring liquidated damages was granted for other reasons not related to the curtailment. Connolly refused to accept the 146 days proposed and demanded a full year's extension, and the 146 days were thereupon increased to 365 days. These same extensions originally proposed in the first part of September were incorporated, without any attempt at re-estimation or recomputation, in identical letters to each of the contractors dated November 26, 1947, signed by Mr. F. A. Banks, District manager.[9]

Typical of the letters sent out on November 26, 1947, was the letter to Terteling as follows:

> This is in confirmation of the proposal made at the meetings with your representatives at Ephrata commencing on August 12 that you curtail your operations during a portion of the fiscal year ending June 30, 1948, under your above-described contract in order to extend the time at which a complete shut down of operations on the Columbia Basin Project might otherwise result because of a lack of available funds. In accordance with the informal understanding then had, your contract time for performance is hereby extended 97 days by reason of such curtailment. If the extension of time herein granted should prove to be insufficient to cover the delay in performance of your contract actually incurred as a result of the curtailment of your work pursuant to the proposal above-mentioned, I will be glad to consider an application for further extension at the proper time.
>
> Please acknowledge the receipt hereof in the space provided below and return the original, retaining a copy for your files.

By these formal extensions, Winston-Utah was granted 170 days on the West Canal contract and 113 days on the East Low Canal contract; Connolly 365 days on his contract; Terteling 97 days on his; and Bair-Crick 75 days on theirs. No further extensions of time, by reason of curtailment of funds were granted any of the contractors and all of the contractors completed their contract work within the time as extended by these orders and for other causes unrelated thereto without incurring liability for liquidated damages and no liquidated damages were assessed against any of the contractors here involved.

14. On December 1, 1947, Mr. Banks addressed identical letters to each of the contractors here involved, of which the following to Winston-Utah is typical:

> As you were informed at a conference on August 12, 1947, there were in existence at the beginning of the fiscal year ending June 30, 1948, in connec-

[9] The one exception was in the case of Connolly, which appeared in the November 26, 1947, letter as 365 days instead of the 146 days originally suggested which was increased after Connolly's strenuous objection to the extension initially proposed.

tion with the Columbia Basin Project, a number of contracts theretofore made contingent on the necessary appropriations being made for expenditures thereunder, including your above-described contract, the estimated, aggregate, potential earnings under which contracts during the current fiscal year 1948 would exceed the funds available for the entire project during such year.

This is in confirmation of the information then given in the light of the provision of these contracts making the Government's liability thereunder contingent on there being made the necessary appropriations for expenditure thereunder. This will also advise you that unless the status of funds available for this fiscal year shall hereafter change, it is anticipated that the funds available for payments under your contract will be exhausted some time before the end of the current fiscal year, at which time, of course, no further payments can be made. While it is impossible to predict with precision exactly when that point may be reached, our best estimate in the light of the information available to us at this time is that the point of exhaustion of funds available for payments under your contract will be reached by the end of January 1948. Every effort will be made to advise you further about 30 days before the estimated date of exhaustion of available funds as that point more nearly approaches. You will, of course, be advised promptly in the event of there being made available funds in addition to those now available for contract payments in this fiscal year.

15. Congress reconvened during December 1947, and by supplemental appropriations made sufficient funds available to permit resumption of full construction schedules on the contracts here in suit for the remainder of the 1948 fiscal year.

Accordingly, on December 26, 1947, identical letters were sent by the Acting District Manager to each of the contractors herein, of which the following to Winston-Utah is typical:

In previous correspondence concerning the availability of funds for the payment of contract earnings during the fiscal year 1948 under your above numbered contract, we advised that should there be any change in the status of such funds, as then indicated, we would notify you promptly. I am glad to be able to advise you that additional funds are now available for that purpose as provided by the Third Supplemental Act, 1948.

On February 6, 1948, the actual amount made available for the remainder of the fiscal year was communicated to Winston-Utah and Connolly by letters of that date. Thereafter, the contractors were free to resume normal operations. Any reorganizing necessary could normally have been accomplished between December 26, 1947 and February 6, 1948.

Winston-Utah was informed that $850,500 would be available under its West Canal contract, and $960,000 under its East Low Canal contract and Connolly was informed that $917,323 would be available under its Bacon, Siphon & Tunnel contract. The record does not contain letters to Terteling and Bair-Crick similar to the February 6, 1948 letters to Winston-Utah and Connolly. It is found as a fact, however, that similar information was mailed to or furnished these contractors at the same time.

16. Each of the contracts and specifications here involved contained the following identical provisions:

ARTICLE 3. *Changes.*—The contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than Five Hundred Dollars shall be ordered unless approved in writing by the head of the department or his duly authorized representative. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: *Provided, however,* That the contracting officer, if he determines that the facts justify such action, may receive and consider, and with the approval of the head of the department or his duly authorized representative, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in article 15 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the prosecution of the work so changed.

ARTICLE 9. *Delays—Damages.*—If the contractor refuses or fails to prosecute the work, or any separable part thereof, which such diligence as will insure its completion within the time specified in article 1, or any extension thereof, or fails to complete said work within such time, the Government may be written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby. If the contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. If the Government does not terminate the right of the contractor to proceed, the contractor shall continue the work, in which event it will be impossible to determine the actual damages for the delay and in lieu thereof the contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed or accepted the amount as set forth in the specifications or accompanying papers and the contractor and his sureties shall be liable for the amount thereof: *Provided*, That the right of the contractor to proceed shall not be terminated or the contractor charged with liquidated damages because of any dealys in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes, if the contractor shall within 10 days from the beginning of any such delay (unless the contracting officer, with the approval of the head of the department or his duly authorized representative, shall grant a further period of time prior to the date of final settlement of the contract) notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal, within 30 days, by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal as to the facts of delay and the extension of time for completing the work shall be final and conclusive on the parties hereto.

ARTICLE 16. *Payments to contractors.*—(a) Unless otherwise provided in the specifications, partial payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, on estimates made and approved by the contracting officer. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

Specifications, par. 11.

Failure of Congress to appropriate funds. If the operations of this contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the contractor hereby releases the Government from all liability due to the failure of Congress to make such appropriation.

Specifications, par. 22.

Commencement, prosecution, and completion of work. The contractor shall begin work within thirty (30) calendar days after date of receipt of notice to proceed and shall complete all of the work within nine hundred (900) calendar days [10] from the date of receipt of such notice. Delays due to the operation of the national priorities system effective subsequent to the date of the bid will be considered to be delays due to unforeseeable causes and beyond the control of the contractor. The capacity of the contractor's construction plant, sequence of operations, method of operation, and the forces employed shall, at all times during the continuance of the contract,

[10] Terteling's contract and Winston-Utah's East Low Canal contracts specified 800 days.

be subject to the approval of the contracting officer and shall be such as to insure the completion of the work within the specified period of time.

Specifications, par. 23.

Liquidated damages. The contractor shall pay to the Government, as fixed, agreed, and liquidated damages, the sum of three hundred dollars ($300) per day for each schedule for each calendar day's delay.[11]

The contract and specifications as to each contractor herein are now in evidence as Joint Exhibits Nos. 1, 2, 3, 4, and 5, and are included herein by reference.

17. The effect of the shortage of funds on each of the several contracts and contractors here involved varied according to the nature of the work, the progress attained at the time of curtailment, the prospects of completing the work within the contract period, weather conditions, and other factors.

Included in the types of work in the various contracts were such unrelated construction items as: canal excavation (both common and rock); concrete tunnel lining; excavation for dam foundations; sorting, placing and compaction of earth fill in dams; and placement of riprap in dams.

Weather conditions affect various items of work in varying degrees. For example, earth fill cannot be performed when frozen, or at freezing temperatures, or when too moist, or too dry. Concrete placing operations other than in tunnels cannot be performed during winter months, except at increased expense due to the necessity of heating aggregates and protecting freshly placed concrete from freezing, and it is not the usual practice in that locality to place concrete during the winter months, unless it is to be placed in areas naturally protected from the elements. Earth and rock excavation can be, and is usually, carried on during the winter seasons in that area and could have been performed in the winter of 1947–1948. Winter weather also decreased the efficiency of labor.

No delays or disruptions occurring prior to August 16, 1947, or after February 6, 1948, when funds again became available, can be attributed to the curtailment program.

Claim of Winston-Utah

18. At all pertinent times hereinafter mentioned, Winston Bros. Company was a corporation organized under the laws of the State of Minnesota, maintaining its principal office at Minneapolis, Minnesota, and The Utah Construction Company was a corporation organized under the laws of the State of Utah, maintaining its principal office at Salt Lake City, Utah; said corporations, as joint contractors and coventurers, hereinafter referred to as "Winston-Utah", entered into two contracts with the United States, acting through the Chief Engineer of the Bureau of Reclamation, Department of the Interior, said contracts being identified, dated, providing original completion date and being in the original stated total amounts as follows:

Contract Number	*Specifications Number*	*Date of Contract*	*Completion Date Originally Specified*	*Original Stated Contract Amount*
12r–16197	1286	June 28, 1946	Feb. 11, 1949	$2, 871, 796
12r–16796	1422	Oct. 25, 1946	Mar. 9, 1949	3, 977, 136

These contracts are hereinafter referred to as the "West Canal" and the "East Low Canal" contracts, respectively.

19. At the end of July 1947, all excavation on the West Canal was substantially completed and the trimming and concrete lining of the canals and the construction of the two concrete siphons were planned to be completed that fall. Excavation had not been completed on the East Low Canal and it was planned to continue that excavation through the winter season of 1947–48.

Plaintiff would not have performed any concrete operations either on canal lining or siphon work after November 8, 1947, at which time all such work would have been shut down for the winter.

Work on Dry Coulee Siphon No. 1 on the West Canal commenced in July 1947 and was discontinued on September 4, 1947, at which time plaintiff had completed eleven sections of the siphon. That work would have been continued until November 8, 1947, and plaintiff thereby lost 65 calendar days or 2.2 months on that phase of the work.

[11] Winston-Utah's West Canal contract specified $300 per day. Winston-Utah's East Low Canal specified $300 and $500 per day. Bair-Crick's South Coulee Dam specified $400 per day. Connolly's Bacon Siphon & Tunnel specified $500 per day. Terteling's Long Lake Dam specified $300 per day.

No concrete lining on the West Canal or concrete siphon work on the East Low Canal was done in the fall of 1947. The concrete lining equipment which had to be specially constructed was not all delivered to the site of the work until September 1947 and it could not have been assembled and set up for operation prior to September 20, 1947. Because concrete lining of the West Canal did not start on September 20, 1947, and continue until November 8, 1947, plaintiff, Winston-Utah, thereby lost 50 calendar days, or 1.7 months on that phase of the work.

Likewise the siphon forms for the East Low Canal were delivered to the site in September 1947 and could not have been assembled and set up for operation prior to September 15th. Because concrete siphon work on the East Low Canal did not commence on September 15th and continue until November 8th, plaintiff, Winston-Utah, thereby lost 55 calendar days or 1.8 months on that phase of the work.

It is reasonable to assume that except for the agreed curtailment of operations plaintiff, Winston-Utah, would have continued its concrete operations on Dry Coulee Siphon No. 1 and conducted concrete lining on the West Canal and concrete siphon work on the East Low Canal until November 8, 1947, or later. There was no slowdown or curtailment of Winston-Utah's operations prior to the discontinuance of work on the West Canal on September 4, 1947, nor was there any slowdown or curtailment of excavation in the East Low Canal at any time. Had such operations been carried on, plaintiff could have completed an additional 21 sections or more of siphon on the Dry Coulee Siphon No. 1 on the West Canal; 17,500′ of canal lining on the West Canal and 48 sections or more of siphon on the East Low Canal.

These lost periods of time on the West Canal were concurrent and in any event amounted to approximately 65 days of contract time. On the East Low Canal other work such as excavation continued at a normal pace. The contract time lost by the curtailment of siphon concrete operations on the East Low Canal is, therefore, difficult to estimate, but in any event did not exceed 55 calendar days.

20. During the period from September 25 to November 8, 1947, the contractor's actual earnings on both the West Canal and East Low Canal were $196,544.40. Had Winston-Utah performed the concrete canal lining and siphon work referred to in finding 19 above, it would have earned an additional $756,842.11, made up of $589,214.77 for concrete work on the West Canal and $167,627.34 for concrete work on the East Low Canal, making a total possible earning for the period (including the actual earnings) of $953,386.51. On the assumption that such additional work could have been performed, except for the agreement to curtail operations, there was a loss of revenue during the period representing 79.4 percent of the total possible earnings.

21. A. GENERAL AND ADMINISTRATIVE EXPENSE (PT. I OF CLAIM)

During the period September 4 to November 8, 1947, Winston-Utah incurred certain fixed costs which continued at a more or less uniform rate throughout. The books and records of the plaintiff reflect the following expenses in the nature of fixed costs during the months of September, October, and November, 1947.

General and Administrative Expenses

	Sept.	Oct.	Nov.
Salaries and wages:			
Management and supervision	$2,240.09	$1,868.10	$1,526.74
Office	2,051.70	2,058.33	1,034.34
Warehouse	1,521.33	1,102.92	464.33
Watchmen		492.50	389.47
General expense:			
Telephone and telegraph (approx. min.)	45.90	46.82	29.71
Safety and first aid	104.44	30.44	
Lighting expense	479.92	1,905.68	1,434.17
License and permits	6.70	6.70	6.70
Protective clothing	9.27	9.27	9.27
Fire protection	54.17	54.17	54.17
Privileges and property damage	25.33	25.33	25.33
Insurance:			
Equipment and supplies	1,310.98	1,310.98	1,310.98
Trucks and autos	175.04	175.04	175.04
Forgery and fidelity	13.68	13.68	13.68
Taxes:			
Personal property	653.26	653.26	653.26
Motor vehicle licenses	131.07	131.07	131.07
Rentals:			
Bailey bridge at $35 per month	35.00	35.00	35.00
Hutments	4.00	4.00	4.00
Totals	8,861.88	9,923.29	7,296.76

Adjustment to period 9/4 to 11/8/47. (See Findings No. 19 and No. 20):

26/30ths of September	$7,680.30
All of October	9,923.29
8/30ths of November	1,945.80
Total	19,549.39

Portion attributable to cut-back in performance during this period, or 79.4% of $19,549.39. (See Finding No. 20) $15,522.22

The fair and reasonable portion of fixed costs incurred by Winston-Utah during the slowdown period which was not recoverable from revenues received amounts to $15,522.22.

B. MECHANICAL EXPENSE

The plaintiff makes claim for a proportionate part of certain mechanics' wages paid during the autumn of 1947, contending that the wages paid were a fixed cost. The mechanical expense claimed was affected by the slowdown of operations. The evidence supports, a finding that $4,212.27 of this expense can be attributed to the curtailment of operations.

C. ELECTRICAL EXPENSE

The plaintiff makes claim for a proportionate part of certain wages paid electricians during the autumn of 1947, contending that the wages paid were a fixed cost. The electrical expense claimed was affected by the slowdown of operations. The evidence supports a finding that $2,964.27 of this expense can be charged to the curtailment of operations.

D. BUS SERVICE

The plaintiff makes claim for a proportionate part of certain bus expenses alleged to have been incurred in transporting workers from their homes or the contractor's camp to and from the work areas involved under both contracts. The plaintiff contends that such expense is a fixed cost. It concedes that the initial claim is duplicated, in part, and further concedes that this bus expense does not exceed $7,938.00.

Prior to November 1947, the bus expense was included in the plaintiff's books as part of "Truck and auto expense." After November the bus expense was carried as a separate account. The plaintiff's books and records do not support the claim in the amount of $7,938.00. The amount claimed as a fixed cost is an estimated figure. It is found that an amount of $1,680.69 may be properly charged to the curtailment of operations due to restriction of funds.

E. MISCELLANEOUS EXPENSE

This item of claim has been considered in computing the allocation of fixed costs under Item A, "General and Administrative Expense" above.

EQUIPMENT COSTS

22. A. STANDBY EXPENSE ON IDLE EQUIPMENT

The plaintiff, Winston-Utah, claims standby or idle time expense for certain of its equipment used in concreting operations on both contracts. It makes no claim for other equipment engaged in excavation operations under the East Low Canal contract, the use of which equipment was not affected by the slowdown. The plaintiff contends its concreting equipment was idle for a ten-week period in September, October and November 1947; that it is entitled to compensation for the idle time in accordance with the provisions of the "Contractor's Equipment Ownership Expense" manual published by the Associated General Contractors of America, Inc.

The following statement appears in the plaintiff's written claim, Exhibit 1 to the petition:

> It is readily understandable, then, that any disruption of the work progress schedules would seriously and adversely affect the cost of doing the work. Expensive equipment, *in many instances specialized equipment which could not be used elsewhere*, would be idled.

A substantial amount of the concreting equipment used by the plaintiff on this work was equipment especially designed and manufactured for use in trimming and lining the canals and constructing the siphons under these particular contracts. The equipment used for canal construction consisted in general of several huge truss-type mobile apparatus built to fit the dimensions of this particular canal, supported by tractors traveling along the canal bottom, or on rails laid on either side of the canal banks, some equipped with scraping, leveling and tamping devices whereby the bottom and side slopes of the canal were readied for concrete, and others with concrete mixing and placing equipment, grooving machines and other such devices, all designed to increase the efficiency of trimming and lining operations on the canal. The siphon forms and jumbos also were especially designed and manufactured for use in constructing siphons of the particular dimensions of these contracts. Such special equipment has some slight speculative future use in that it might have been used by the plaintiff if it obtained other contracts for the construction of like canals or siphons, or could perhaps have been sold to the successful bidders on other such contracts. The concrete lining equipment and forms for the East Low Canal siphons were later sold to the Terteling Company and used by it on a later contract on the Columbia Basin Project for like work. The plaintiff used the West Canal Siphon forms on a later contract it obtained, known as the Soap Lake contract.

During the period of the slowdown the plaintiff had no other work on which the concreting equipment here referred to could be utilized and there was no rental market for that type of equipment. Such equipment is usually considered a job expense and not a capital asset, and is charged off to the job by amortization out of earnings.

23. On September 1, 1947, the plaintiff had concreting equipment on the work having a value of $660,117.72. On September 9th, 29th and October 6, it acquired other equipment having a value of $82,584.82, or a total value at some time during the pertinent period of $742,702.54.

The motor patrols, general purpose concreting equipment and siphon concreting equipment were used in a normal manner on the work until September 4th. This equipment was idle from that date until November 8, a period of 2.2 months.

That equipment and its value are as follows:

Description:	Value
Motor Patrols	$11, 500. 00
Car Scoop	3, 179. 86
Hoppers, Appur. Equip	1, 766. 37
Cement Silos	13, 714. 45
Spur Track	4, 743. 15
Bins & Batchers	9, 253. 05
Conveyors & Hoppers	4, 414. 16
Batch Trucks	47, 212. 01
Concrete Buckets	649. 99
BG Loaders	9, 307. 50
Mixers	2, 945. 80
Vibrators	4, 191. 82
Siphon Jumbo & Forms [12]	61, 448. 17
Siphon Jumbo & Forms [12]	39. 826. 65
Bender & Cutter	10, 696. 26
Welder & Tester	21, 378. 98
Total	246, 228. 22

[12] The plaintiff purchased siphon jumbos and forms prior to September 1st in the amount of $61,448.17, and acquired additional jumbos and forms on September 8th, in the amount of $39,826.65. The latter acquisition is assumed to be the equipment for siphon concreting under the East Low Canal contract and the proof shows that these forms could not be assembled for concreting before September 15. After September 4th the plaintiff discarded the jumbo, or traveler, therefore used in connection with the West Canal siphon concreting. However, as neither the value of the discarded traveler nor the total value of the East Low Canal siphon forms can be determined from the record, idle time on all this equipment has been computed from September 4th, thus resolving any doubt in that regard in Winston-Utah's favor.

It is considered that a fair and reasonable allowance for the increased cost to the plaintiff because of the idle time of the above-listed equipment is $13,647.68.

24. The evidence shows that the canal lining and canal fine-grading equipment could not have been assembled for use before September 20, 1947. This equipment was therefore available for concreting, but in idle status, from that date to November 8th, a period of 1.7 months.

A listing of that equipment and its value is as follows:

Description:	Value
Slip Form	$112, 967. 09
Pavers	61, 091. 86
Pavers	2, 960. 99
Groover	760. 63
Groover	39, 797. 18
Backfillers & tampers	100, 843. 82
Subgrader	135, 049. 50
Rail and track	25, 071. 11
Rail handling	13, 090. 00
Template truss	4, 842. 14
Total	496, 474. 32

It is found that the increased cost to the plaintiff because of the idle time of its canal concreting and fine-grading equipment was $26,327.00.

The total increased cost to the plaintiff by reason of idle time of its concreting equipment resulting from the shortage of funds was $39,974.68.

25. At the time of accepting final payment under its contracts here involved, the plaintiff executed releases in which it excepted and reserved its claim in the total amount of $184,250.08, which included an amount of $11,536.86, for increased cost of standby or idle time for its concreting equipment.[13]

26. *Difference in cost of setting up equipment in cold weather, February and March, 1948, as compared to August and September, 1947*

During February and March 1948, the plaintiff expended $28,152 42 for labor in erecting its concreting equipment in preparation for canal lining and siphon construction. Had this equipment been set up in August and September 1947, as it could have been, more favorable weather would have been encountered and hence greater efficiency in the labor involved. Cold weather operations usually

[13] During the hearings in this case the plaintiff, Winston-Utah, abandoned its original method of calculating increased cost of standby or idle time for its concreting equipment, and now seeks to increase its claim rom $11,538.86 to $61,918.83.

reduce labor efficiency at least 25 percent below normal efficiency under warm weather conditions. It is reasonable to assume that the loss in labor efficiency in setting up this equipment in the colder weather was about $8,000,000.

27. Purchase of extra equipment in order to speed up production in siphons during 1948

On July 12, 1947, the plaintiff commenced construction of the concrete siphon sections comprising Dry Creek Siphon No. 1, a part of the West Canal contract. From July 12 to September 4 it completed eleven sections of siphon from Sections 20 to 10, inclusive, and then closed down further siphon concreting until the spring of 1948. During this period its average production was approximately one and one-half sections of siphon per week.

For this work the plaintiff used equipment consisting of two inside forms and one outside form. The outside form was moved on rails as concreting of the siphon sections progressed. The inside forms were supported by a traveler or carrier 75′ in length. As the sections were completed an inside form was collapsed and moved along the traveler to a new position in conjunction with the outside form. The two inside forms were used alternately with the outside form. When moved to the proper position the inside form was expanded and held in position for the concreting of the siphon barrel by means of hydraulic jacks which were a part of the traveler. The forms and travelers were necessarily of considerable weight and of a size capable of concreting siphon sections two feet in thickness and twenty-five feet inside diameter.

Using the above described equipment the plaintiff's progress was slow. The traveler was awkward and clumsy to handle. It was difficult to align the outside and inside forms, and the hydraulic jacks failed to hold the inside form in position. It required two days to move the forms and place them in position for a new concrete pour.

Plaintiff was not satisfied with the progress being made with its form and traveler. Plaintiff's representatives informed defendant's inspectors of its difficulties with the equipment, and of its intention to change the equipment before continuing with siphon concreting in the spring of 1948. In the fall of 1947, the traveler was discarded and not thereafter used on the work.

In the spring of 1948 the plaintiff purchased an additional outside form, two travelers and other equipment to replace, in part, the equipment which had been used for siphon concreting in 1947. The total cost was $101,813.90 which, after deducting the salvage value and the savings in cost of a paving mixer otherwise required, resulted in a net cost of $27,813.90.

The new equipment operated satisfactorily and much more efficiently. Using the new forms and travelers, the plaintiff was able to complete an average of one section of siphon each day. The new forms were moved and reset for the succeeding pour in a period of six hours as compared to two days for the old forms used in 1947.

The cost incurred by the plaintiff in 1948 for purchase of additional siphon forms and travelers for work on the West Canal was (1) due to plaintiff's decision in 1947 to abandon the equipment then in use, because of its demonstrated inefficiency, (2) for the purpose of making up the time lost while using the unsatisfactory equipment, and (3) to make up the time lost between September 4 and November 8, 1947, because of the curtailment of funds and to avoid the necessity of operating through another winter on this phase of the project. It would appear reasonable to allow one-third of this item of $27,813.90, namely $9,271.30, as being an expense connected with the forced slowdown of operations.

Increased Cost of Work on Account of Difference in Cost of Cement

28. A. CEMENT NOT USED IN 1947

If construction of the East Low Canal siphon had started in September 1947, Winston–Utah would have purchased and used 7,600 barrels of cement in such construction at that time. The cement was not purchased until the work was done in the spring of 1948, at which time the price of cement, including freight, had increased 37 cents per barrel. Accordingly, an increased cost of cement of $2,812 was incurred.

B. CEMENT PURCHASED IN 1948 FROM SOURCES OTHER THAN THE TWO EASTERN WASHINGTON MILLS

The plaintiff contends that the slowdown of construction operations on the Columbia Basin Project in the fall of 1947 resulted in increased demand for cement from the Eastern Washington Mills in 1948; that the mills could not satisfy the demand; and that for that reason it was required to make purchases of cement from other sources in Western Washington at an increased cost of $15,432.77. Defendant has stipulated that in 1948 the plaintiff purchased 30,995.72 barrels of cement from sources other than the two Eastern Washington Mills, at an increased cost of 49.79 cents per barrel over what it would have cost if purchased at the same time from Eastern Washington Mills.

29. The plaintiff expended $1,928.67 in the spring of 1948 for repairing erosion to excavations for siphons which erosion would not have occurred had the siphon concrete at those points been placed in the fall of 1947. Defendant has stipulated that this cost represents a reasonable amount for the work involved.

Increased Costs Due to Raise in Wages of Carpenters

30. Commencing with the payroll period ending April 4, 1948, carpenters' wages were increased 20 cents per hour straight time and 30 cents per hour overtime over the wages in effect in the fall of 1947. Pursuant to the escalator clause of the contracts, the plaintiff has been reimbursed 65 percent of increased wages paid commencing with the payroll period ending April 4, 1948.

During the period September 4 to November 8, 1947, a period of nine weeks, no carpentry work was performed by the plaintiff in connection with concreting operations. During the comparable period of nine weeks in 1948, when concreting operations were in progress on the West Canal, the plaintiff paid wages to carpenters for 6963½ straight time and 843½ overtime hours.

In addition, the plaintiff paid wages at the higher rates for 730 straight time and 106 overtime hours in connection with the concreting operations on the East Low Canal contract. For the total of 7693½ straight time hours and 949½ overtime hours, the plaintiff paid increased wages totaling $1,823.55. Adding 6 percent for payroll taxes and insurance increases the total to $1,932.96. Deducting 65 percent, previously reimbursed under the escalator clause of the contracts, leaves $676.54 as the increased costs of carpenter wages in 1948 over those which would have been incurred if the work had been performed in the fall of 1947.

31. In summation, it appears reasonable to conclude that because of the slowdown of operations in order to keep its earnings within available allocated funds, increased costs were incurred by Winston-Utah in the following amounts:

General and Administrative Expense	$15, 522. 22
Mechanical Expense	4, 212. 27
Electrical Expense	2, 964. 27
Bus Service	1, 680. 69
Equipment Costs:	
(1) Standby Expenses on idle Equipment	39, 974. 68
(2) Increased Cost of setting up Equipment in cold weather	8, 000. 00
(3) Purchase of extra equipment in 1948	9, 271. 30
Increased cost of cement in 1948 over what it would have cost in 1947	18, 244. 77
Cost of repairing winter erosion	1, 928. 67
Increased cost due to raise in wages of carpenters	676. 54
Total	102, 475. 41

TERTELING CLAIM

32. At all pertinent times hereinafter mentioned, J. A. Terteling & Sons, Inc., hereinafter referred to as "Terteling" was a corporation organized under the laws of the State of Idaho, maintaining its principal office at Boise, Idaho.

Plaintiff Terteling was engaged in work under two contracts in 1947 on the Columbia Basin Project. Contract I2r–16745, Specifications 1401, provided for the construction of Long Lake Dam. Contract I2r–16313, Specifications 1236, Schedules 1 and 3, provided for main canal construction from Station 24+00 to Station 430+00.

The Long Lake Dam contract, dated October 25, 1946, was originally scheduled to be completed February 23, 1949, and was originally in the stated amount of $1,770,592

33. The first information that Terteling had of a contemplated limitation of funds during the 1948 fiscal year was upon the issuance of the press release dated August 6, 1947, referred to in Finding 7.

Terteling's representatives attended the August conference above referred to and as a result of the curtailment of slowdown of operations on the irrigation contracts, Terteling elected to continue full scale operations on its contract for construction of portions of the Main Canal and to the extent that limitation on operations might become necessary to effect the curtailment or slowdown on its operations under the Long Lake Dam contract.

Plaintiff did continue full scale operations on the Main Canal contract throughout all periods here pertinent and no claim is made in connection therewith. The claim here made is for losses which are claimed to have resulted from a curtailment of operations on the Long Lake Dam contract.

34. Long Lake Dam is an earth and rock fill dam. The contract required the construction of the dam and appurtenant works including the excavation of an emergency spillway, and the excavation and concrete lining of a diversion tunnel. The construction of the main canal headworks at the dam outlet was performed under another contract, not here involved. The design of the dam called for the excavation of a cut-off wall trench to bed rock adjacent to the axis of the dam. The bottom of the trench at bed rock was to be 30′ wide with 1 to 1 side slopes. Within the trench a concrete cut-off wall to a minimum height of 5′ was to be constructed from abutment to abutment of the dam. The concrete cut-off wall was to rest on a concrete footing extending a minimum of 3′ into bed rock.

The excavation of the cut-off trench and the construction of the concrete cut-off wall had to be performed as a preliminary to the placement of embankment materials in any given portion of the dam structure itself.

The materials used for the dam embankment were divided into four zones. Zone 1 consisted of impervious material of selected clay, sand and gravel, rolled in 6″ compacted layers. This material was to be placed in the trench around and over the cut-off wall and carried upward to the crest elevation of the dam. Zone 2 consisted of semi-pervious material of selected clay, sand and gravel, increasing in permeability toward the outer slopes, rolled in 6″ compacted layers. It was to be placed both upstream and downstream of Zone 1 material. Zone 3 consisted of pervious material of selected sand and gravel, increasing in coarseness toward the outer slopes, placed in 12″ layers, sluiced, and compacted by travel of equipment. It was to be placed both upstream and downstream of Zone 2 material. Zone 4 was rock fill increasing in coarseness toward the outer slopes, placed in 3′ horizontal layers. Each zone material was to be placed in triangular section on increasingly flatter slopes both upstream and downstream. The above described features of the work are shown on contract drawing 222 D–10013, introduced in evidence as Joint Exhibit No 5, which is incorporated herein by reference.

35. The four zones of embankment materials were required to be placed in layers or lifts at approximately horizontal levels as the work progressed upward to the crest elevation of the dam. Therefore no substantial amount of Zones 2, 3 and 4 materials could be placed in the dam until the completion of the concrete cut-off wall and the placing and compaction of Zone 1 material the full width of the trench up to or above original ground level.

36. In August 1947, plaintiff was behind its contemplated progress schedule. Delays had been caused by the difficult excavation and special treatment necessary in faults and fissures encountered in excavating the foundations for the cutoff wall footing in the trench. These and other difficulties encountered in excavation in the cut-off wall trench substantially delayed the work.

This was a unit price contract under which Terteling was to be paid per unit of work performed for each item as defined in the specifications. Early in the work the plaintiff submitted a proposed construction program based on such items which set forth anticipated starting and completion dates of each of the several items under the contract.

According to its proposed construction program, Terteling contemplated starting Item 3, "excavation, all classes, for foundation of dam" on December 15, 1946, and completing that item of work by April 30, 1947. The work was actually completed about August 1, 1947, some three months behind schedule.

Plaintiff, Terteling, contemplated starting Item 4, "excavation, all classes, for footings of embankment cut-off wall", February 1, 1947, and completing that work by July 1, 1947. The work started in March 1947, and was completed in August 1947, more than a month behind schedule.

It contemplated commencing Item 29, "concrete in footing of embankment cut-off wall" February 15, 1947, and completing that item by June 30, 1947. The

work was started in May 1947, and completed near the end of August 1947, some two months behind schedule.

According to plaintiff's construction program, Item 30, "concrete in embankment cut-off wall" was to commence March 1, 1947, and to be completed July 15, 1947. That work actually commenced in June 1947 and on August 25, 1947, was only 55 percent completed, already sone 40 days behind schedule with the work only slightly more than half completed.

Items 21 to 27, "drilling and grouting operations", were to commence February 1, 1947, and to be completed at the end of July 1947. That work was not started until May 1947, and was not completed until sometime in 1948.

Items 14 and 16, "earth fill in embankment" and "tamping of earth fill" were to commence May 1, 1947, and to be completed at the end of October 1947. These operations actually started late in August 1947, and were not completed until sometime in 1948.

The plaintiff's construction program contemplated the completion of all work under the contract by the end of December 1947, but because the aforesaid delays threw the entire contract behind schedule, there was apparently no possibility of completing the contract by the end of 1947 regardless of any slowdown of operations which might be due to curtailment of funds.

37. Work Items 3 and 4 (excavation of dam foundations and excavation of footings for cut-off wall) were key items in that, until their completion, other items of work could not proceed. Work Items 29, 30, 21, 22, 23, 24, 25, 26, and 27, relating to concrete in cut-off wall footings, concrete in cut-off wall and grouting operations followed the foundation and footing excavation, and until the completion of such excavation in the lower areas of the foundation, the commencement of Items 14 and 16 relating to hand tamping, placing and compacting of Zone 1 embankment material could not proceed.

38. The placing, hand tamping and rolling of embankment material in the cut-off wall trench, which was commenced in August 1947, was greatly restricted due to the confined area in which to work and the limited amount of equipment which could be utilized in the area, so that progress was slow. Prior to August 25, 1947, the plaintiff had hand tamped 1,031 cubic yards of material.[14] During the following month ending September 25, it hand tamped and compacted by rollers an additional 26,000 cubic yards. During the month ending October 25, 1947, it tamped and compacted an additional 55,770 cubic yards. For the period October 25, to October 31, plaintiff placed an additional 12,789 cubic yards of Zone 1 material. On the latter date plaintiff closed down embankment placement operations for the winter season.

39. A. At the closedown of operations on October 31, 1947, the plaintiff had completed Zone 1 earth embankment placement to the elevation where it could commence spreading out its operations to include Zones 2, 3 and 4 materials. In the meantime, it had stockpiled a relatively small amount of material suitable for Zone 1 embankment in the process of originally excavating the cut-off wall trench. The stockpiled material was stored on both sides of the trench and covered areas in which Zones 2 and 3 materials would necessarily be placed. This material became wet and was above optimum moisture content for compacting and rolling, unless it was spread out in layers on the fill and allowed to dry. The other alternative was to move the stockpiles and replace that material, which ultimately would be used in the embankment, with fill material from borrow pits at some added expense.

B. The plaintiff's payrolls reflect an average weekly employment during July 1947 of 3,872 man hours; August 1947 an average of 4,612 man hours; September 1947 an average of 4,278 man hours; and October 1947 an average of 3,273 man hours. Plaintiff did not start a substantial reduction of its employment until the middle of October. The payroll for the week ending October 1, 1947, shows that long after the August conferences relating to a possible slowdown of operations, the plaintiff was maintaining a higher weekly employment than the average employment for the month of July 1947. As shown in finding 38, a substantially increased yardage of material was placed during the month of October 1947 over that placed the previous months. During October the plaintiff was commencing to work above the restricted trench area heretofore mentioned and hence was better able to utilize its working force and equipment.

[14] Some lean concrete used to fill foundation fissures was paid for under the specification item for hand tamped materials, and is included in the 1,031 cubic yards mentioned. It should be noted that the plaintiff built and used a special wall roller for tamping in restricted areas. The descriptive words "hand tamping" as used by various witnesses includes tamping by machine.

The monthly progress payments do not reflect an immediate slowdown or curtailment of operations following the August conferences. During the month of September 1947 the plaintiff received the second highest earnings for any month in 1947, being exceeded only by March. A falling off of earnings did begin in October 1947, however.

C. The evidence shows that during the period August to October 31, 1947, when the plaintiff closed down operations, substantial progress was being made by the plaintiff in earth embankment placing operations and that delays, not directly related to the curtailment of funds, were the principal reasons the work had not progressed further by October 31. The evidence does not show that, because of limitations of funds, plaintiff Terteling curtailed its operations on Long Lake Dam in 1947 prior to closing down such operations. The evidence does show that operations were conducted to the extent practicable under the conditions prevailing through the period ending October 31, 1947.[15]

40. During the period August to October 31, 1947, the plaintiff continued drilling and grouting operations, completed excavation of the diversion tunnel, completed concrete lining in the invert of the tunnel, completed the upstream trash rack structures leading to the tunnel, and completed the cut and cover section of the tunnel involving excavating, concreting and back-filling operations.

After October 31, the work yet remaining in the diversion tunnel was the completion of the concrete lining exclusive of the invert, or bottom section, of the barrel. The work would have required the pouring of only 518 cubic yards of concrete for which the plaintiff would have earned, under bid Items 28 and 32, additional revenue of approximately $27,000. The tunnel lining operation would have required four to six weeks time to complete.

Had the plaintiff elected to complete the tunnel lining operation in the fall of 1947, after October 31, it would have been put to additional expense for heating water and aggregates, expense for protecting concrete from freezing, expense of maintaining the concrete crew, camp and mess hall, and would have suffered a loss of efficiency in the work of its employees.

While it appears unlikely that plaintiff would have undertaken such tunnel work during the winter months, the evidence indicates that there would have been sufficient money to permit the earning of some $27,000 for tunnel lining if conditions had been favorable for such undertaking.

41. Bid Item 2 of plaintiff's contract provided for "excavation, all classes, in emergency spillway channel." Under the proposed construction program, the plaintiff anticipated commencing that item of work on May 1, 1947, and completing it by November 30, 1947. Excavation of the spillway channel was not commenced until January 5, 1948, for the reasons hereinafter stated.

As early as December 1946, a change order was under consideration involving, among other things, a change in location of the spillway. The change order was not issued until December 17, 1947, and commencement of this work was not authorized prior to that date. It would have been possible for plaintiff to have begun work on the spillway prior to or in anticipation of the change order if authorized to do so by the Chief Engineer of the Bureau of Reclamation.

Payment of spillway excavation under bid Item No. 2 was for "all classes" meaning that the plaintiff received the same price per cubic yard for both common and rock excavation. The common excavation was not suitable for dam embankment and was wasted in the reservoir area above and below the dam. The excavated rock was intended to be and was used in Zone 4, the rock filled portion of the dam embankment.

42. As stated in finding 35, the work required placing the four zones of materials in approximately level layers as the dam embankment progressed. After October 31, the plaintiff could have excavated and placed only a limited amount of rock from spillway excavation in Zone 4 of the dam without exceeding permissible height limitations in relation to Zones 1, 2 and 3 materials. An alternative would have been to excavate the rock and stockpile it, at an additional expense of later rehandling and placing it in Zone 4 of the dam embankment. After January 5, 1948, the plaintiff proceeded with spillway channel excavation. The material excavated was common, or earth, through the period ending March 25, 1948. No payment was made for spillway excavation for the month of April 1948. As of May 25, 1948, a total of 10,840 cubic yards of rock was excavated and placed in Zone 4 of the dam embankment. By that date, placement of Zones 1, 2 and 3 materials had proceeded to a point which permitted the placing of Zone 4 rock fill without stockpiling.

[15] Terteling's general superintendent and chief witness testified that he "hoped" to continue earth embankment operations to November 15, 1947, before being closed down by unfavorable weather conditions.

After the approval of the change order on December 17, plaintiff, on December 23, and 24, brought two shovels from Boise, Idaho, to Long Lake and commenced excavation in the spillway on January 5, 1948.

The evidence does not show that the postponement of commencement of excavation in the spillway from May 1, 1947 to January 5, 1948, was caused by the limitation of funds occurring in August 1947. The evidence does show that work on spillway excavation was undertaken promptly after the approval of the change order on December 17, 1947, which had been under consideration for about a year.

43. During the period August 15 to November 15, 1947, the plaintiff contends that except for the alleged slowdown of operations, it could have performed the following items of work in the estimated dollar value shown:

Item No.:	*Value*
5. Excavation, common, in open cut for outlet works	$6,300
8. Furnishing and placing steel tunnel liner plates	1,800
10. Excavation, common in borrow pit No. 1 and transportation to dam embankment	76,140
11. Excavation, common, in borrow pit No. 2 and transportation to dam embankment	131,000
14. Earth fill in embankment	87,150
15. Sluiced sand, gravel, and cobble fill	3,780
17. Rock fill in embankment	10,500
32. Concrete in tunnel lining (very little, no definite estimate)	-------
Total	316,670

This contention is not sustained by the evidence.

The evidence shows that work under Item 5 above was partially performed in the fall of 1947, before the closedown of operations. As of November 25, 1947, there remained unearned under this item approximately $2,100. This item of work was not completed until late in 1948. Earlier completion would have interfered with the plaintiff's access roads to the spillway area and the east abutment of the dam.

All work under Item 8 had been completed prior to November 1947.

Items 10, 11, 15, and 17 relate to excavating and hauling materials from the borrow pits and spillway for placing in Zones 1, 2 and 3 in the dam. As appears in finding 38, the plaintiff shut down Zone 1 earth fill in the dam embankment on October 31, 1947. Items 10, 11, 15 and 17 were dependent upon progress of Zone 1 material placed in the cutoff trench. Prior to October 31, 1947, work had not progressed to the elevation where any substantial amount of Zones 2, 3 and 4 materials could be placed. Item 14 covered Zones 1 and 2 embankment. Substantially all embankment materials which could be placed were placed prior to October 31, 1947. It appears that it would have been practicable to continue embankment placing through November 1947 and a few days in December. After October 31, Zones 1 and 2 materials could also have been compacted without serious interference by weather conditions for a similar period. Zones 3 and 4 materials could not be placed because of height limitations necessary to be maintained between the zones.

Plaintiff also contends that the following items of additional work could have been performed in the period November 15, 1947, to March 15, 1948.

Item No.:	
2. Spillway excavation (125,000 cu. yds.)	$143,750
17. Rock fill in embankment (125,000 cu. yds.)	26,250
32. Concrete lining in tunnel	27,000
28. Furnishing and handling cement	2,500
Total	199,500

The evidence does not support this contention.

In previous findings it has been shown that no additional earnings in the period claimed could have been obtained on spillway excavation rock fill in embankment or concrete lining in tunnel except at additional expense, which latter item includes furnishing and handling cement. It is not established by the evidence that limitation of funds was the only reason why Terteling did not perform more work than was performed, either before or after November 15, 1947.

44. The time extension was given or agreed upon prior to the period during which delay, due to restriction of funds, could have occurred. The extension letter cannot be used as a measure of actual delay or damages, if the facts concerning what subsequently happened do not support that result.

The evidence does not establish that plaintiff Terteling incurred all the additional expenses and losses claimed during the period from August 15, 1947, to March 15, 1948, solely because of the limitation of funds resulting from the curtailment of appropriations for the fiscal year 1948. However, it is found that the following items of expense or loss could have been avoided if plaintiff had been permitted to proceed without curtailment of operations or funds, pursuant to the original plan.

Expenses of moving equipment from Long Lake Dam to other projects after shutdown, and expenses of returning equipment to Long Lake to resume operations

(1) Between the dates of August 18 and September 27, 1947, the plaintiff transferred one Northwest shovel; two dump trucks; and a light plant to other jobs. The expense to plaintiff, as shown by its books and records, was $1,099.80.

(2) Between the dates October 15 and November 7, 1947, the plaintiff transferred to other jobs one Northwest shovel; two compressors; seven dump trucks; one pick-up truck; one light plant; one Esso bucket; one wagon drill and one caterpillar tractor. The expense to the plaintiff, as shown by its books and records, was $200.06.

(3) On December 23 and 25, 1947, the plaintiff transferred two Northwest shovels from Boise, Idaho, to Long Lake Dam. These were not the identical shovels which had been transferred from Long Lake Dam on August 19 and October 24. The expense to the plaintiff, as shown on its books and records, was $3,380.90.

(4) On March 23, 1948, plaintiff moved five dump trucks from Boise, Idaho, to the Long Lake Dam. Following the winter shutdown period, the plaintiff was able to expand its earth moving and placing activities. About October 31, 1947, it had completed earth fill in a portion of the cut-off wall trench and in March 1948 was in a position to commence placement of the four zones of materials in the dam. The expense to plaintiff, as shown by its books and records, was $414.71.

Loss on idle equipment

The Contractor's Equipment Ownership Expense Manual, 1949 Edition, published by the Associated General Contractors of America, in evidence as Plaintiffs' Exhibit 11, is incorporated herein by reference. That manual sets out criteria to be followed by contractors in establishing the expense of owning and *operating* construction equipment. The manual provides that factors of depreciation, major repairs and overhauling, interest on the investment, storage, insurance and taxes "are expressed as a percentage of the original capital investment" (acquisition cost) of the equipment. The manual lists the many categories and items of standard construction equipment and sets out for each a percentage of the capital investment per working month as the cost of ownership and operation. The manual states on its cover "this is *not* a rental schedule." Furthermore, it does not purport to evaluate ownership expense for equipment in idle status.

The plaintiff has asserted a claim for rental or idle time of certain construction equipment, some of which was at the site of the work for the period August 15, 1947 to March 15, 1948; some of which was brought on the job on or after November 1, 1947, and after March 15, 1948; and some of which has not been shown to have been on the job at any time.

Eliminating equipment not shown to have been on the job and equipment which the plaintiff chose to bring on the job after November 1, 1947, the plaintiff's books and records reflect an original capital investment, or acquisition cost of $97,100.68. Applying the percentages of ownership and operating expense contained in the Equipment Ownership Expense Manual indicates a monthly ownership and operating cost of $6,290.22. When in idle status, equipment does not depreciate to the extent it does in active use, nor does it incur the expense of major repairs and overhauling required of equipment in normal operation. A fair evaluation of the plaintiff's ownership expense for such equipment, as may have been in idle status, is one-half of the operating expense, or $3,145.11 per month.

During the period August 15, to October 31, 1947, at least a part of the equipment was being used for earth moving and embankment operations; concreting equipment was being used for constructing trash rack structures and the invert of the diversion tunnel, and grouting equipment was being used for that operation.

The record does not disclose what equipment was in full operation, what in partial operation, or what, if any, was in totally idle status during this period.

Apparently the plaintiff had no intention of continuing earth embankment operations after November 15. If the contractor could have continued both its embankment and concreting operations until November 15, 1947, as it had hoped to do, the maximum idle time for all of his equipment would have been two weeks, or a total expense for idle time of $1,572.50.

Since it is shown that sufficient money was available to perform the work of concreting in tunnel lining for four additional weeks after November 15, 1947 (see finding 40), the plaintiff's decision to defer this work was not related to the curtailment of funds. This item is accordingly disallowed.

Percent of Boise overhead allocated to Long Lake Dam

For the period November 1, 1947, to March 15, 1948, the plaintiff's total overhead costs incurred by its home office on all jobs were $120,913.19. During the same period its total job costs on all contracts were $1,389,937.60, of which $83,578.69 was incurred on the Long Lake Dam job. The percentage of costs of the Long Lake Dam job to all job costs was 6 percent. On the basis of job costs the amount of overhead allocable to the Long Lake Dam job for the 4½ month period is $7,254.79, or $1,612.18 per month. The amount allowed for this item is therefore $4,836.54 for three months, November, December, 1947 and January 1948, since plaintiff learned in December 1947 that additional funds were available and it seems reasonable to assume that operations could have been resumed by February 1, 1948.

Rental and Supervision at Job Site

Additional costs, resulting from the curtailment of funds, were incurred under this heading. The amount for a three-month period is $13,161.90.

Summary

Summarizing, it is found that plaintiff Terteling had the following expenses, which could have been avoided if it had been permitted to proceed pursuant to the original plan without any curtailment of funds:

Expense of Moving Equipment	$5,095.47
Loss resulting from Idle Equipment	1,572.50
Boise Overhead allocated to Long Lake Dam	4,836.54
Rental and Supervision at job site	13,161.90
Total	24,666.41

CONNOLLY CLAIM

45. At all pertinent times hereinafter mentioned, T. E. Connolly, Inc., hereinafter referred to as "Connolly," was a corporation organized under the laws of the State of Delaware maintaining its principal office in San Francisco, California; Connolly entered into a contract with the United States, acting through the Chief Engineer of the Bureau of Reclamation, Department of the Interior, said contract being identified, dated, providing original completion date and being in the original stated total amount as follows:

Contract Number	*Specifications Number*	*Date of Contract*	*Completion Date Originally Specified*	*Original Stated Contract Amount*
12r–16311	1236–2	June 13, 1946	Mar. 7, 1949	$3,494,420

which contract is sometimes hereinafter referred to as the "Bacon Tunnel" or "Connolly" contract.

46. Plaintiff Connolly's contract provided for the construction of the Bacon Siphon and Bacon Tunnel as a part of the main irrigation system between Stations 93+00 and 203+70, the transitions from the main canal into the siphon, from the siphon into the tunnel, and from the lower end of the tunnel into another section of the main canal, together with a short section of main canal from Station 203+70 to Station 214+00. A continuation of the main canal from the latter point under another contract carried the water into Long Lake from whence it was fed into another segment of the main canal through the Long Lake Dam headworks.

The Bacon Siphon was constructed of reinforced concrete. It is 1,013′ in length (Stations 93+00 to Station 103+13) with a barrel 23′ 3″ inside diameter and walls 23″ in thickness. The Bacon Tunnel was lined with unreinforced concrete. It is horseshoe shaped, 10,057′ in length (Stations 103+13 to 203+70) and has an inside diameter at the spring line the same as the diameter of the siphon, the portion above the spring line being of the same dimensions as the upper half of the siphon.[16]

47. Connolly originally planned a sequence of construction operations which provided for substantial completion of the siphon before starting tunnel lining in order that the siphon forms could be used in the tunnel lining. The siphon forms were similar to those used by Winston-Utah in the construction of siphons under the contracts for the West Canal and East Low Canal. They were of steel construction, and large, expensive and complicated items of equipment needed for the forming of concrete siphon barrel sections 23′ 3″ inside diameter. They were so designed and fabricated that following their use in concreting the "flat runs" of siphon barrel, the upper segment could be re-used in conjunction with additional side forms in tunnel concrete lining operations.

48. In August 1947 the plaintiff was behind its contemplated progress schedule for siphon construction. Plaintiff's original program called for common and rock excavation for structures (siphon) to commence September 15, 1946, and to be completed by February 1, 1947. The work actually started February 1, 1947, and was substantially completed in August 1947. The plaintiff's original program was to start concreting the siphon barrel on April 1, 1947, and to complete that work, except the transition sections, by the end of October 1947. The siphon forms which required considerable time to fabricate had been ordered in the spring of 1947 and were ready for delivery in August 1947. In view of the curtailment, or lack of funds, Connolly canceled the order for the tunnel forms—but one carload was already on its way and arrived in August 1947. When the order was replaced in 1948, the allocation system and steel shortage made it difficult to obtain these forms. No siphon concreting was done in 1947. The first siphon concrete was poured May 24, 1948, and the "flat run" of barrel sections was completed November 19, 1948. The concreting of the transition section, connecting the siphon with the north portal of the tunnel, had to await the completion of the tunnel lining and hence was one of the last items of work. It commenced February 23, 1950, and was completed April 6, 1950.

If all siphon-forming equipment had been on the site August 18, 1947, it would have required approximately two months or until October 18, to assemble and erect the forms and the pouring of concrete in the siphons could not have commenced before the latter date.

The siphon construction required the fabrication, including welding, of large steel hoops, and the placing of reinforcing steel prior to the pouring of concrete into the assembled and positioned forms. Under the contract, the reinforcing steel was to be furnished by the defendant. Steel was in short supply at that time, and some delay was experienced in making deliveries. The first reinforcing steel arrived at the site August 21, 1947, but sufficient of the various types needed to commence the work of fabrication and placing of the reinforcing steel was not delivered until a month later, or September 21, 1947. All of this work would have been necessary before concreting operations could be performed, and would also have delayed the commencement of siphon concreting until the late fall of 1947.

49. The plaintiff originally chose to excavate the Bacon Tunnel by the so-called pilot tunnel method, working from both the north and south portals simultaneously. Under this method, a smaller tunnel than the required full dimensions is first driven to a common meeting point approximately midway between the portals. It requires the employment of two separate crews and double the amount of tunnel driving equipment. After "holing through" in the pilot tunnel the contractor must then pull back his crews and equipment and again commence excavation from one or both portals, as he may elect, to the full tunnel dimensions. In theory, by using comparable equipment and crews, a two heading operation should be completed in one-half the time required for a one-heading operation.

In the tunnel excavation operations, Connolly's principal items of equipment consisted of drilling jumbos, muckers, muck cars, narrow gage track, electric and Diesel locomotives, and ventilating equipment consisting of blowers with both canvas and metal ventilating ducts. The ventilating equipment was highly important to the safety of workers, and to the speed with which drilling, blasting

[16] The above description is taken from Contract Drawings 222D–9949, 9950 and 9954, which are a part of Joint Exhigit 4. These drawings show the stationing and lengths of the siphon and tunnel by profiles, and the diameters and thickness of concrete by cross-sections.

and hauling operations could be resumed, it being necessary to clear the tunnel of gases following each blasting operation.

The rock at the face of the tunnel was drilled and loaded with explosives from the drilling jumbos. After each shot was fired, the rock was loaded by the mucking machines into the muck cars and hauled by the locomotives to designated dumps outside the north and south portals.

The original construction program provided the tunnel excavation to commence about November 15, 1946, and to be completed March 7, 1949. This work actually started December 12, 1946, and under a revised program, later adopted by the plaintiff, was completed March 25, 1949.

50. The original construction program contemplated commencement of concrete tunnel lining early in September 1947, and the completion of that work at the end of January 1949. Connolly was months behind schedule on this item of work long before the August conferences relating to the curtailment program. On July 8, 1947, before being aware of any necessity for curtailment, Connolly revised the schedule so as to postpone commencement of tunnel lining until March 1948. Tunnel lining was actually commenced May 27, 1949, and was completed December 18, 1949, for reasons herinafter set out.

At the time of the August 1947 conferences, Connolly was already more than four months behind schedule on its siphon concreting operations with no reasonable probability of commencing such work that fall, even if all of the siphon forms could have been delivered and assembled by October 18, 1947. According to the revised program, tunnel lining was to be postponed from September 1947 to March 1948, a period of some seven months.

It was economical and feasible to continue tunnel excavation during the winter season, and that work did so continue in the winter of 1947–1948.

51. Connolly began tunnel excavation at the south portal on December 12, 1946, by the pilot tunnel method and continued until August 18, 1947, when excavation from the south portal was discontinued. Excavation was commenced at the north portal April 9, 1947, by the pilot tunnel method and continued until July 19, 1947. On that date, the plaintiff discontinued further pilot tunnel operations, pulled back to the north portal again and commenced excavating the remianing material the the full dimensions of the tunnel. On November 8, 1947, the full dimension excavation had reached the end of the north pilot tunnel and thereafter a "full face" operation was conducted. On August 8, 1948, the "full face" excavation from the north portal reached the northern extremity of the pilot tunnel originally driven from the south portal and thereafter Connolly continued bench excavation to the full dimension of the tunnel toward the south portal until March 25, 1949, when all tunnel excavation was completed. There was no slowing down or cessation of excavation operations from the north portal from the date it commenced until final completion of that work, and it was conducted on a three-shift basis throughout the entire period of excavation.

Under this one heading method of excavation the commencement of tunnel lining had to await final completion of the tunnel excavation in order to prevent one operation interfering with the other.

52. On July 8, 1947, Connolly informed defendant's resident engineer of the revised construction program above referred to, which was briefly as follows: it proposed to immediately pull back and commence a full face excavation operation from the north portal of the tunnel and continue until March 1948 when excavation would be stopped and tunnel lining commenced from that portal; to continue pilot tunnel excavation from the south portal until the middle of September 1947, then back up and start a full face operation; and to complete all tunnel excavation from the south portal by June 1948. Under this program, all tunnel concreting would have been carried on from the north portal through to the south portal until completed in December 1948.

53. Connolly had encountered some difficulties in operation as the excavation of the south portal progressed. As designed and constructed the invert or floor of the tunnel at the south portal was at an elevation some 16′ below the level of an existing lake adjacent to the tunnel mouth. It was necessary to drain this lake, in the bed of which were to be constructed the outlet transition and main canal extending below the tunnel outlet under the Connolly contract in order to keep its waters out of the tunnel and to prepare the ground for the construction of the transition and main canal. The low elevation of the south portal required the laying of haul track from the portal to the dump in the muck of this lake bed, and the hauling of the tunnel waste upgrade from the portal to the dump area some 1,500′ distant and about 25′ higher than the pilot tunnel floor, requiring the use of booster locomotives. Because of its location in the lake bed, the track required excessive maintenance.

As the excavation progressed in the south portal, the plaintiff experienced increasing difficulty with the ventilating system. Not having steel ducts available, it used canvas and rubberized ducts from the blowers to the point of operations at the tunnel heading. The ducts leaked and failed to deliver sufficient air. This type of duct would not permit the usual practice of reversing the blowers to draw poisonous gases from the heading after blasting because the suction collapsed the ducts. The only alternative was to blow sufficient air into the tunnel to expel the gases through the tunnel proper. This was inefficient and required extended periods of time to clear the air in the tunnel. At times as the work progressed the plaintiff lacked sufficient tubing to keep the outlet within 40′ or 50′ of the working face, which is usually necessary for proper ventilation.

Commencing about July 15, 1947, the ventilation problems at the south portal became increasingly more critical. Tests made by the defendant's chief inspector indicated the presence of poisonous gases in the tunnel during working periods. The normal time of 30 minutes shutdown after blasting for clearing the gases from the tunnel was necessarily increased in some instances to as long as two hours.

If full face operations had been undertaken from the south portal, the elevation of the floor would have been some 14′ lower than the elevation of the floor of the pilot tunnel, thereby multiplying and increasing the difficulties of tunnel waste disposal by necessitating hauls up even steeper grades than existed during the pilot tunnel operations.

North portal excavation was much more economical and efficient. For that operation, the plaintiff had available metal ducts which provided adequate ventilation to the heading. Hauling operations presented no problem, as the grade from the portal entrance to the dump was downhill into the Coulee and the grade of the tunnel itself was practically flat, being a drop of only .187 feet (about 2½ inches) per 100 linear feet of tunnel from north to south.

54. Connolly's revised program of July 8, 1947, appears to have been an optimistic one and would have been economically unsound if carried out. As stated in finding 48, the plaintiff was already several months behind schedule in siphon concreting operations. The record does not establish that the flat run of siphon concreting could have been finished in the fall of 1947. To free one or both sets of siphon forms for tunnel concreting in March 1948, would have required carrying on siphon concreting operations throughout the winter of 1947–48. The very heavy added expense for winter protection of concrete, heating of aggregates and water and loss of efficiency of workmen would have made such a program uneconomical. Measured by the progress made prior to July 1947, it is not indicated that the tunnel excavation from the south portal could have been completed by June of 1948. In its work from the north portal, which had proved to be the most efficient of the two operations, Connolly did not complete tunnel excavation until March 25, 1949, although working continuously on a three-shift basis.

55. The proof does not establish that plaintiff Connolly closed down excavation operations from the south portal on August 18, 1947, because of the curtailment of funds. At the time of the August conferences relating to curtailment, the plaintiff was advised informally that it would receive an extension of time under its contract; and plaintiff knew on August 18, 1947, that it would be possible to reschedule its operations without incurring liability for liquidated damages for delay, which would have been in the amount of $500 per day.

The 365 days' extension of time allowed, coupled with the difficulties encountered in the excavation at the south portal as compared with the north portal, were important factors which influenced Connolly in a decision to concentrate his efforts on the north portal, irrespective of the curtailment of funds.

56. As shown in finding 11, the plaintiff's allotment of funds for work to January 31, 1948, was $674,000. On December 4, 1947, Connolly informed the defendant that "based upon past performance and future estimate we figure that at the end of January 1948, there would be approximately $200,000 still available to us under the above allocation". The monthly gross estimates show that for the period August 1947 to January 1948, inclusive, Connolly earned $452,521.39 (including escalator payments) against its allotment of $674,000. Connolly's earnings for the month of July 1947 were $78,762. Its average monthly earnings during the seven months period preceding August 1947 (January through July) were $83,603, exclusive of escalator payments. Its average monthly earnings for the period August 1947 through December 1947 were $72,958, exclusive of escalator

payments.[17] It had an approximate amount of $221,000, or 33 percent, of its allotment unobligated and available for any work under its contract, which it might have chosen to perform. So far as available funds were concerned, there was a sufficient amount to have continued south portal tunnel excavation after August 18, 1947, and to have assembled forms and poured siphon concrete that fall if Connolly had considered it economically feasible to do so. Weather conditions and the difficulty encountered in obtaining additional manpower were other factors which resulted in a policy decision by plaintiff Connolly not to resume the south portal tunnel excavation in the spring of 1948.

57. The evidence does not establish that the plaintiff Connolly suffered any delay or loss because of curtailment of funds.

Bair-Crick Claim

58. At all pertinent times hereinafter mentioned Roy L. Bair & Company was a partnership, composed of Roy L. Bair, Lester N. Johnson and William W. Singer, maintaining its principal office at Spokane, Washington, and James Crick & Sons was a partnership, composed of James Crick, Sr., James Crick, Jr., and Robert Crick, maintaining its principal office at Spokane, Washington; said partnerships, as joint contractors and co-venturers, hereinafter referred to as "Bair-Crick", entered into a contract with the United States, acting through the Chief Engineer of the Bureau of Reclamation, Department of the Interior, said contract being identified, dated, providing original completion date and being in the original stated total amount as follows:

Contract Number	*Specifications Number*	*Date of Contract*	*Completion Date Originally Specified*	*Original Stated Contract Amount*
I2r–16203	1231	June 18, 1946	Mar. 7, 1949	$2, 775, 887

which contract is hereinafter referred to as the "South Coulee Dam" contract.

59. South Coulee Dam is situated about 30 miles southwest of Grand Coulee Dam. Together with North Coulee Dam it forms the balancing reservoir approximately 30 miles in length which impounds waters pumped into the Grand Coulee by means of the Coulee Dam pumping plant heretofore mentioned.

The South Coulee Dam contract required the construction of an earth and rock fill dam some 9,900′ in length and appurtenant works, including a concrete main canal headworks, approach channel upstream of the dam leading to the headworks structure, and the first 2,400′ of the main outlet canal from Station 0+00 at the headworks structure to Station 24+00. The specifications required the excavation of a trench to bedrock slightly upstream of the dam axis to be 30′ wide at the bottom with 1½ to 1 side slopes. A concrete cutoff wall to a maximum height of 10′ and a minimum height of 5′ was to be constructed within the trench from abutment to abutment of the dam, which would rest on a concrete footing extending a minimum of 3′ into bedrock. Under the headworks structure the cut-off wall was to be constructed in a trench extending below the concrete floor.

Grout pipes were to be positioned in place in the cutoff wall footing before the concrete was poured, through which cement grout could be forced into the rock fissures and crevices under the dam and thus seal the foundation rock so as to prevent seepage of water through the rock mass under the dam.

A canal headworks structure (outlet works from the reservoir to the main canal) normal to the axis of the dam, consisting of a concrete barrel section and inlet and outlet transitions, was to be constructed at an elevation lower than the crest of the dam. After completion, the barrel section of the headworks was to be covered by the same classes of embankment materials placed in the dam structure. The work also required the construction of a roadway along the crest of the dam which after completion would form a segment of U. S. Highway 10.

The materials to be used for the dam embankment were divided into three classes or zones.[18] Zone 1 consisted of impervious material of selected clay, sand

[17] So-called escalator payments consisted of reimbursement to the contractor of 65 percent of the amount paid for increases in wages occurring during the term of the contract. They would, of course, affect the unexpended balance available to the contractor during the curtailment period, but increases in revenue attributable solely to escalator payments would not necessarily indicate any increase in the amount of work accomplished. Hence, in order to give a fair comparison, escalator payments have been excluded in computing the average expenditures during each of the two periods shown above.

[18] As heretofore shown, Long Lake Dam constructed by Terteling was in four zones.

and gravel rolled in 6" compacted layers, to be placed in the trench and around and over the cut-off wall to the crest elevation of the dam. Zone 2, comparatively narrow in section, consisted of selected sand and gravel placed both upstream and downstream of Zone 1 material in 12" layers, sluiced, and compacted by routing of equipment. Zone 3 consisted of rock fragments and boulders from required excavation, increasing in coarseness toward the outer slopes, placed in 3' horizontal layers, both upstream and downstream of Zone 2 material. The estimated quantities of Zones 1, 2 and 3 materials needed for the completed dam were 530,000 cubic yards—105,000 cubic yards—and 920,000 cubic yards respectively.

The segment of main canal to be constructed by Bair-Crick was unlined, and there was no siphon construction under that contract. Bair-Crick therefore had no need for specially designed and fabricated equipment for siphon construction and concrete canal lining such as that required under the contracts performed by Winston-Utah and Connolly.

Bair-Crick subcontracted the bending and setting of reinforcing steel required in its concreting operations, as well as numerous other items of metal installation, to the Sparling Steel Company. The grouting of the foundation also was subcontracted.

60. In the fall of 1946, Bair-Crick submitted a proposed construction program set up in accordance with the bid items under the contract showing a scheduled completion date of November 30, 1948. By July 1947, the work had fallen several months behind schedule.

On July 2, 1947, the defendant's resident engineer, O'Donnell, telephoned to James Crick, Jr., requesting an estimate of anticipated earnings for the fiscal year 1948, and Crick suggested that O'Donnell go ahead and prepare the estimate from the knowledge he already had of Bair-Crick's operations. On July 3, 1947, on completion of such estimate, the resident engineer again telephoned Mr. Crick and read the figures to him. Mr. Crick indicated it was satisfactory and told the resident engineer to submit it. Such estimated earnings concurred in by Crick for the six months period, August 1947 through January 1948, and the actual earnings for the same period are as follows:

Month	Estimated Earnings	Actual Earnings
August	$170,100	$234,860.99
September	134,600	155,366.27
October	124,600	142,526.82
November	59,500	62,315.16
December	43,300	55,440.00
January	43,300	95,388.94
Total	575,400	745,898.18

As shown in finding 11, the total allotment of funds to Bair-Crick during the so-called curtailment period was $650,000 in August 1947 and increased to $750,000 in October 1947 which was $174,600 in excess of such estimated earnings on an unrestricted program and some $4,000 in excess of actual earnings.

During the July 3d telephone conversation between the resident engineer and Crick, it was agreed that the progress chart of the work would be brought up to date and future estimates of earnings would be maintained for the use of both parties. From time to time during the period between July 10 and August 1, 1947, defendant's office engineer, with the knowledge and occasional collaboration of James Crick, Jr., worked out a revised progress chart, estimating future earnings under the several pay items by months, for the remainder of the contract period. During the work of preparation, certain of the figures were changed at the suggestion of Crick. Near the end of July the chart, showing estimated future earnings by months, was completed and received the approval of Mr. Crick.

The progress chart, as revised, incorporated estimated contract earnings for the six months period, August 1947 to January 1948, inclusive, as follows:

August	$207,121.50
September	172,969.00
October	142,787.50
November	71,507.50
December	41,430.00
January	40,430.00
Total	676,245.50

The October 1947 allotment of $750,000 was $73,754.50 more than Bair-Crick's estimated earnings for the period, and the actual earnings of $745,898.18 during the period of the so-called curtailment were $69,652.68 more than the estimated earnings projected in July 1947.

The July 3d estimate of anticipated earnings and the revised construction program which Crick assisted in preparing, were based on a full unrestricted program of construction with no consideration of any future curtailment by reason of funds shortage or otherwise.

On the basis of its original construction program, Bair-Crick, by July 1947, had fallen behind anticipated progress money-wise to the extent of $222,787.84. By January 1948, it had improved progress to the extent that, based on its original program, it was behind money-wise only $14,510.87. The record shows no curtailment of the work in the fall of 1947 (over that originally anticipated) because of a shortage of funds.

61. The original construction program did not indicate that Bair-Crick proposed to do concrete work during the period November 15, 1947, to March 1, 1948, which corresponds with the period when such operations are usually closed down in the Columbia Basin area because of increased expense due to winter conditions. The revised program indicated that 5 percent of the concrete work in the headwork structure, of an estimated value of $11,725, would be performed in November 1947, and then be discontinued until March 1, 1948.

The original program showed that excavation of common materials from borrow pits, and tamping and placing of earth fill in the embankment were to be discontinued on October 31, 1947, and not resumed until March 1, 1948. The revised program indicated 5 percent of this work to be done in November 1947 and then be discontinued until March 1, 1948. These were also items of work either impractical or impossible of accomplishment during winter conditions in the Columbia Basin area.

Both programs contemplated the excavation of rock for the approach channel and main canal, and the placement of Zone 3 rock fill in the embankment to continue uninterruptedly during the winter months of 1947–1948, and, as revised, during the winter months of 1948–1949.

62. Because the concrete headworks structure was to underlie the dam embankment, this was the key item of work affecting progress on the job. The final completion of the three zones of embankment, the installation of gates, hoists and other equipment within the headworks, and the construction of the roadway along the crest of the dam were all dependent upon progress made in the headworks structure concreting operations.

Bair-Crick's original program showed that the placing of concrete and reinforcing steel in the headworks structure was to commence on May 1, 1947. The revised program, as stated in finding 61, indicated that only 5 percent of this work would be done in November 1947. For reasons hereinafter set out, no concrete or reinforcing steel was placed in the headworks structure proper until some time in 1948, although the cut-off wall in the trench under the headworks structure was constructed in the fall of 1947. This only required a small amount of headworks concrete and reinforcing steel.

63. A small amount of grouting was done in the fall of 1946. The work of grouting the main curtain along the axis of the dam started March 17, 1947. The grouting subcontractor commenced working from the west end of the dam and proceeded eastward to the area of the headworks structure at Station 88+08, which location was reached August 1, 1947. The area of the headworks structure was then by-passed and the grouting continued from Station 96+20 to the eastern extremity of the dam to Station 110+00. This part of the grouting operation east of the headworks structure was suspended on August 26, 1947, because the area remaining to be grouted in the vicinity of the headworks structure was not ready for that operation. Before the grouting could be completed the cut-off wall trench passing under the headworks structure had to be excavated and the concrete and reinforcing steel work completed in the cut-off wall footing. The trench excavation was done during the period August 15 to September 9, and the footing concrete was placed during the period September 10 to September 30. The subcontractor then resumed grouting operations in the headworks structure area on October 6 and completed all of his work on November 26, 1947. There was no curtailment or slackening off of the grouting program from August to completion of the work late in November 1947 except the stoppage resulting from Bair-Crick's delay in completing the cut-off wall trench and footing under the headworks. No delay on this phase of the work, namely, grouting operations, was caused by any curtailment of operations or funds.

64. The excavation in the headworks area was chiefly rock excavation. The necessary blasting for the bulk of the excavation in the headworks proper was completed August 27, 1947. However, there yet remained trimming and scaling operations through the area, some further required excavation in the headworks outlet transition, and the excavation of the upstream, downstream and center cut-off trenches.[19] Also additional rock excavation remained to be done in the approach channel and the main canal. The necessary rock excavation in the headworks structure, and the approach channel and main canal in the immediate vicinity thereof was not completed, and apparently could not have been made ready for the start of headwork concreting operations before November 1947. After that date the placing of concrete would necessarily have required the greatly added expense of heating aggregates and water, protecting the fresh concrete from freezing and the increased cost resulting from loss of labor efficiency working under winter weather conditions. As shown in finding 61, Bair-Crick did not contemplate any concreting work after November 15, in the planning of its construction operations. Furthermore, James Crick, Jr., collaborated in the preparation of a revised program for continuing work on an unrestricted basis which contemplated completing only 5 percent of the headworks structure concreting in November 1947.

65. Earth embankment operations, including placement of Zones 1, 2 and 3 materials, started on May 22, 1947, on a two-shift basis, and, except for a 10-day period in June, continued on that basis until October 20, when embankment placing of Zones 1 and 2 materials was closed down. The excavation, hauling and placing of Zone 3 rock fill continued on a one-shift basis throughout the winter of 1947–1948.

During the period May 22 to October 20, Bair-Crick placed Zones 1, 2, and 3 materials in the embankment. However, it concentrated its efforts primarily in placing Zones 1 and 2 materials, only sporadically hauling and placing Zone 3 rock fill. As a result, when the work of placing Zones 1 and 2 materials stopped on October 20, that work was well in advance of placing Zone 3 material. The method employed had two advantages. First, it allowed concentration of men and equipment in filling all low depressions in the dam foundation with the required Zone 1 material, and the bringing up of the embankment materials to an elevation which obviated the expense of dewatering when work would be resumed in the spring of 1948. Second, it provided a substantial amount of rock placement for the winter months affording continuous employment of Bair-Crick equipment and men within a restricted program. By operating on a one-shift basis after October 20, Bair-Crick was able to work continuously throughout the winter months placing Zone 3 material. The one-shift operation in the excavating, hauling and placing of Zone 3 rock fill enabled Bair-Crick to place the material in all areas which were available in the dam embankment during the winter operation of 1947–1948.

During the period May 22 to October 20, Bair-Crick utilized its entire available equipment to the fullest extent practicable. After October 20, the equipment was transferred to the Zone 3 operation and continued on a one-shift basis throughout the winter of 1947–48.

During the month of July 1947, its average daily placement was 4,505 cubic yards per day, whereas during the period August 12 to October 20, 1947, the average daily placement increased to 6,444 cubic yards.

66. At the conclusion of the work Bair-Crick executed a voucher covering the final payment under the contract. Attached thereto was a release which excepted, among others, a "claim for $234,499.95" which was stated to be "for extra costs imposed on the contractor by reason of the curtailment of construction program effected during the fiscal year 1948 regarding which curtailment of construction program the Bureau of Reclamation has refused to provide * * * additional compensation to cover said extra costs."

67. Although the evidence shows that Bair-Crick delayed the completion of some of the construction work called for by the contract following announcement by the defendant of the plan of curtailment, the allotment of funds allowed for expenditures during the period from August 1947 to January 1948, together with the extension of time of 75 days, made it possible to complete the work involved

[19] In addition to the main cut-off wall extending the full length of the dam including the headworks section, there were two additional cut-off walls constructed in trenches below the elevation of the floor of the transition sections of the headworks, located both upstream and downstream of the main cut-off wall.

without any appreciable financial loss. In other words, the slowdown or curtailment of operations is not shown to have been made necessary because of lack of funds.[20]

Sparling-Connolly Subcontract

68. On March 27, 1947, plaintiff Connolly entered into a subcontract with the Sparling Steel Company, a partnership, of Seattle, Washington (hereinafter referred to as Sparling) whereby it agreed to perform certain steel work in connection with the placing of reinforcement bars for concrete construction in the Bacon Siphon and transitions, and setting the forms for curbs in the siphons.

Such subcontract contained the following relevant provisions:

> * * * Sub-contractor further assumes all loss or damage arising out of the nature of the work, the action of the elements, or unforeseen difficulties which may arise or be encountered in the prosecution of the work until its acceptance, and likewise assumes all risks of every description, including all expenses incurred by or in consequence of the suspense or discontinuance of work and for well and faithfully completing the work, in the manner and as provided in said contract and specifications. * * *
>
> 10. None of the parties hereto shall be responsible one to the other for delays suffered in consequence of a suspension of the work as provided in these specifications nor delays suffered by any act or omission of the Government, nor by strikes, acts of God, or other unforeseen causes beyond the control or without the fault or negligence of the respective parties hereto sought to be charged * * *.

The Connolly claim as related to this subcontract is made up of the following items:

(1) Wage rate increases from January 1, 1949, to completion $856.01

Defendant has stipulated that the subcontractor's books and records disclose that he paid $856.01 more in wages in 1949 than he would have paid if the work involved had been completed in 1948. The evidence does not establish that this expense resulted from a curtailment of funds for work which Connolly had contracted to do. The steel work to be done by the subcontractor was necessarily the last work to be performed under the contract.

(2) Claimed additional expense due to equipment purchased in August 1947 which remained in an idle status until steel work was commenced $823.67

The evidence in connection with this item is so indefinite and inconclusive as to preclude a finding as to what the amount should be, even if it were an item of expense traceable to a restriction of funds to Connolly.

(3) Decrease in efficiency of labor in 1948–1949 as compared with 1947 ..... $19,960.23

It is not established by the record that the amount claimed or any other amount can be charged to the curtailment of funds to Connolly.

(4) Claimed loss of profits by Sparling on work which would have been performed on another contract which was lost by reason of the additional time required to perform the Bacon Tunnel job.

This claim is highly speculative in nature. Sparling claims loss of profits on a sub-contract he was never awarded. He could not furnish the necessary bond and the prime contractor would not waive it. He was not awarded a contract on which he bid in July 1949 and on which he assumes that he would have made the same rate of profit which he had previously made. He claims in effect that the curtailment of Connolly's funds in 1947 so adversely affected his financial resources that he lost a contract in 1949 on which he would have realized a profit of $79,050.00.

[20] Bair-Crick's allotment of funds agreed to among the contractors concerned, as later increased by the representative of the contracting officer, in a total amount of $750,000 exceeded Bair-Crick's estimates of its needs on an unrestricted basis in July 1947, for operations during the so-called curtailment period. Bair-Crick collaborated in a revised construction program which contemplated completion of the contract work in April 1949.

The end result of the August conferences was a benefit to the contractor in that Bair-Crick received an extension of contract time of 75 days which relieved it of a possible assessment of liquidated damages set out in the contract in the amount of $400 per day.

Sparling Bair-Crick Subcontract

69. Sparling Steel Company, under a subcontract with Bair-Crick, was obligated to place the reinforcing steel required under the South Coulee Dam contract, primarily in connection with concrete to be placed in the headworks structure. In anticipation of commencing the work, reinforcing steel was ordered for deliveries commencing in the late summer and fall of 1947. The subcontractor's work did not actually commence until January 1948 and continued into 1949. As a result, it is claimed that the subcontractor incurred the following additional costs of performance which would not have been incurred but for the curtailment and slowdown.

(1) Unloading and demurrage costs incurred in unloading steel prior to commencement of operations	$560.46
(2) Increased labor costs due to wage rate increase on January 1, 1949	1,447.01
(3) Decrease in efficiency of labor in 1948 and 1949 as compared to 1947	24,094.75

It is not established by the record that any of these items of expense resulted from a curtailment of funds for work which Bair-Crick had contracted to perform.

70. In considering these claims for losses by Sparling under the subcontracts with Connolly and Bair-Crick, it should be noted that the Bill, S. 3326, refers to this court the claims of the four plaintiffs herein, all prime contractors with the Government. It makes no reference to subcontractors. There is no privity of contract between Sparling and the Government.

71. Losses and damages suffered by the plaintiffs because of a shortage of appropriated funds were as follows:

Winston-Utah	$102,475.41
Terteling	24,666.41
Bair-Crick	None
Connolly	None
Sparling-Connolly Subcontract	None
Sparling-Bair-Crick Subcontract	None
Total	$127,141.82

The foregoing findings of fact, opinion and report will be transmitted to the Senate of the United States, in accordance with the act of March 3, 1911, 36 Stat. 1087, as amended by the act of June 25, 1948, 28 U. S. C. 1492, 2509.

A true copy:

TEST:

[SEAL]

WILLARD L. HART,
Clerk, United States Court of Claims.

Calendar No. 1147

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1135

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JULY 25, 1955.—Order to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2053[

The Committee on the Judiciary, to which was referred the bill (S. 2053) for the relief of Ivan Gerasko, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On line 7, change the period to a comma and insert the following:

under such conditions and controls which the Attorney General, after consultation with the Surgeon General of the United States Public Health Service, Department of Health, Education, and Welfare, may deem necessary to impose: *Provided*, That a suitable and proper bond or undertaking, approved by the Attorney General, be deposited as prescribed by section 213 of the said Act.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to one who is afflicted with tuberculosis in behalf of the husband of a legal resident alien of the United States. The bill has been amended to provide for the posting of a bond as a guaranty that the beneficiary will not become a public charge.

STATEMENT OF FACTS

The beneficiary of the bill is a 57-year-old native of the Ukraine who claims to be stateless and who has never been in the United States. He now resides in Germany. He and his family were taken by the Germans in 1944 and were sent to a labor camp. After the end of the war they remained in Germany, inasmuch as the beneficiary had a record of three arrests in Russia prior to the war for being an anti-Communist. His wife and two daughters came to the United

States in 1951 as displaced persons, but he was refused a visa because he was afflicted with tuberculosis. Recent information is to the effect that the disease is dormant and that he presents no health hazard. The beneficiary's wife and daughters are all employed in Chicago. One daughter is now married.

A letter, with attached memorandum, dated July 15, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 15, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2053) for the relief of Ivan Gerasko, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Portland, Oreg., office of this Service, which has custody of those files.

The bill would provide for the beneficiary's admission to the United States for permanent residence, if found otherwise admissible, by exempting him from the provisions of section 212 (a) (6) of the Immigration and Nationality Act which excludes from the United States those aliens who are afflicted with tuberculosis in any form, or with leprosy, or any dangerous contagious disease.

The bill specifically limits the exemption granted the beneficiary to grounds for exclusion of which the Department of State or the Attorney General has knowledge prior to the date of the enactment of the bill.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE IVAN GERASKO, BENEFICIARY OF S. 2053

The beneficiary was born in Perejaslaw, Ukraine, on September 23, 1897, and is now stateless. His wife and two daughters entered the United States as displaced persons in 1951, and reside in Chicago, Ill. The beneficiary resides at Schubertstrasse 32–143, Ingolstadt, Donau, Western Germany. He is employed as a part-time laborer. He receives between $10 and $15 monthly assistance from his family. He has no assets. His educational background consists of attendance at schools in the Ukraine for 9 years.

The beneficiary states he was arrested in Russia as an anti-Communist in 1920, 1921, and 1938 and imprisoned a total of 18 months. He states that in 1944 the German armies retreating from the Ukraine evacuated him with his family to Germany where he was sent to German labor camps. Beneficiary and his family resided in varicus displaced persons camps in Germany subsequent to July 1945. He was formerly an agronomist and building foreman.

The beneficiary has never been in the United States. His family states he was refused an immigrant visa by the American consul in Munich, Germany, in the early part of 1951 because his chest X-ray disclosed a spot on his lung. His family informs he has undergone numerous examinations by German doctors who state that he is not afflicted with tuberculosis and that the spot on his lung does not change from year to year. Mr. Gerasko is the beneficiary of an approved visa petition filed by his wife. He served in the Russian Army from 1915 to 1917.

Beneficiary's wife is employed as a rivet inspector at $1.05 per hour. One married daughter is employed as a bookkeeper at $200 per month, and the other daughter is employed by a radio corporation as an assembly worker at $1.51 per hour. Stephan Chemytsch, prospective son-in-law of beneficiary and sponsor of the private bill, entered the United States as a displaced person in 1952. Mr. Chemytsch is a student at the University of Oregon in Eugene. He is also employed as a hotel clerk at approximately $175 per month, and has savings of $3,670.61.

Beneficiary desires to take up residence with his wfe in Chicago and seek employment as a laborer, janitor, or carpenter.

Senator Wayne Morse, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following:

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
May 27, 1955.

HON. HARLEY M. KILGORE,
Chairman, Juaiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: Enclosed is a copy of S. 2053, which I introduced May 24 on behalf of Mr. Ivan Gerasko, and copies of correspondence relating to the case.

You will note from the enclosures that Mr. Gerasko and his family were fortunate enough to escape from their native Ukraine and Mrs. Maria Gerasko and their daughter, Maria, now reside at 88 West Eighth Avenue, Eugene. Mr. Gerasko was denied entry into the United States in 1951 because of the existence of a tuberculosis condition, and according to the attached recent report of the Public Health Service officer in Munich, it does not appear that he can be approved medically in the near future. Mr. Gerasko is now living at Schubertstrasse 32–143, Ingolstadt, Germany, and is registered under U. S. S. R. quota No. 008486.3–c.

According to his daughter, no tuberculosis treatment has ever been recommended to Mr. Gerasko by his own physicians and he is working and self-supporting. I have asked for supporting evidence in this respect and as soon as it is received will forward it to your committee.

Miss Gerasko plans to be married this summer to Mr. Stephan Chemytsch, who, I understand, is now a junior at the Univesity of Oregon. They advise me that they are presently employed and are willing to provide financial assurance that Maria's father will not become a public charge if he is permitted to come to the United States.

Needless to say, the family is extremely anxious to be reunited in this country. If, upon considering the facts of this case, the committee feels that it is meritorious, favorable action would be appreciated.

Sincerely yours,

WAYNE MORSE.

EUGENE, OREG., *March 31, 1955.*

HON. WAYNE MORSE,
United States Senate,
Washington, D. C.

DEAR SENATOR: First of all, allow us to introduce ourselves. We are Stephan Chemytsch, 26, now junior at the University of Oregon, and Maria Gerasko, 22, both displaced persons from Ukraine. Both of us are happy to have found a new home and opportunity to learn in this wonderful country and for this we are immeasurably grateful to the American people. We are about to become American citizens.

Like all people, we too have our problems. Our former home country is occupied by the Russian Communists, and Stephan has lost contact with his parents who were unable to escape. I, Maria, was fortunate enough to leave Ukraine with my family, but we, too, had to part. My father, Mr. Ivan Gerasko, who now lives in Ingolstadt, Western Germany, Schubertstrawse 32–143, was denied entry into the United States in 1951 by the United States Public Health Service in Munich, Germany, because of a possible old tuberculosis process. He registered with the American consulate general in Munich, Germany, in 1951 under U. S. S. R. quota No. 008486.3c, and his case was reactivated with the Munich United States consulate last December, but no answer has been received, which indicates a possible rejection.

Stephan and I, we both intend to get married this summer and we still hope for our father to come, else we again shall have to postpone our wedding, since it is an ancient Ukrainian tradition and our ardent desire that our father, the dearest person and relative we possess, would attend our church wedding.

The prolonged absence of our dear father has resulted in immeasurable moral suffering for us and his wife, Mrs. Maria Gerasko, who is with us. We all work and, if necessary, can and shall support him. The facts that he is working and feels healthy and the findings of German X-ray specialists which are favorable would suggest that there is little reason for his exclusion. No tuberculosis treatment has been ever recommended to him.

If there is any way you can help us to unite our family please do it; you are our last hope.

Respectfully yours,

STEPHAN CHEMYTSCH and MARIA GERASKO, Jr.

EUGENE, OREG., *May 6, 1955.*

Hon. WAYNE MORSE,
United States Senate, Washington, D. C.

DEAR SENATOR: Thank you for letters of April 2 and May 3, 1955, and for your efforts in our cause. If our family will be reunited the credit for it will certainly belong to you.

We believe that the Good Lord has not abandoned us. He saved us from Soviet Russian terror in Ukraine, and He also helped us to find a new home and people like you to help us. We trust that His hand will guide us further.

Please let us know if you need any notarized financial assurances that our father, Mr. Ivan Gerasko, will not become a burden to the United States Government as supplement to the private bill you intend to introduce in the Senate. If so, we shall mail them to you immediately.

We remain,

Respectfully yours,

MARIA GERASKO, Jr.
MARIA GERASKO, Sr.
STEPHAN CHEMYTSCH.

AMERICAN CONSULATE GENERAL,
Munich, Germany, April 19, 1955.

Hon. WAYNE MORSE,
United States Senate,
Washington, D. C.

MY DEAR SENATOR MORSE: I have received your letter of April 4, 1955, concerning the immigration case of Mr. Ivan Gerasko.

We have had the case of Mr. Gerasko reviewed by the United States Public Health Service physician attached to this office as medical adviser, and I am enclosing a copy of his report dated April 14, 1955.

I regret that the physician's report is not more encouraging.

Sincerely yours,

J. RAYMOND YLITALO, *American Consul.*

APRIL 14, 1955.

Re Ivan Gerasko.

Miss WINN,
Visa Section, United States Public Health Service.

The above applicant was rejected by the Public Health Service because of pulmonary tuberculosis in November 1953 and November 1954. Numerous X-rays are on file and reveal extensive disease of the upper portion of both lungs and a large solitary tuberculoma in the right mid lung field.

According to existing interpretation of the immigration laws it appears that Mr. Gerasko cannot be approved medically in the foreseeable future.

CHARLES P. STEVICK,
Senior Surgeon (R), Medical Officer in Charge.

[Translation, (German)]

INGOLSTADT, GERMANY, *June 3, 1955.*

EXPERT OPINION

The following is the result of an X-ray examination of the lungs of Mr. Iwan Gerasko, born September 23, 1897, and residing at Schubertstrasse 32, Ingolstadt:

Right lung: The entire upper lobar field shows heavy, shadowy spots of uneven size, which are more closely crowded together behind the third anterior costal arch, in the central portion, a heavy shadow-spot the size of a cherry. Hilus

shows, in both poles, a heavily striated, fibrous condition. Diaphragm, convex and freely mobile. "Sin." [?] [Spleen?] o. k.

Left lung: Upper lobar field, down to the second anterior costal arch, shows heavy shadow-spots of various sizes, closely crowded together, with striata leading down to the hilus. The shadow-spots diminish in density in an apical-to-caudal direction.

Diagnosis: Cirrhotic tuberculosis, with induration of both upper lobes; faint basal pleuritic remnants noticeable in the right [lobe].

I have known the patient since March 28, 1952. The condition of his lungs has remained unchanged, stationary, during the entire intervening period. The patient has always been fit for work. Treatment of his pulmonary disease was not, and is not now, necessary.

[Miss] LUDMILLA KASALICKY, M. D.,
Lung Specialist.

Translated by Elizabeth Hanunian, June 24, 1955.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2053), as amended, should be enacted.

○

Calendar No. 1148

84TH CONGRESS
1st Session

SENATE

REPORT
No. 1136

UNIV. OF MICH.

AUG 1 1955

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THE E. J. ALBRECHT CO.

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1393]

The Committee on the Judiciary, to which was referred the bill (H. R. 1393) for the relief of the E. J. Albrecht Co., having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

Page 2, line 4, strike the words "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to the E. J. Albrecht Co., an Illinois corporation, the sum of $142,007.75, in full satisfaction of its claim against the United States for reimbursement for actual losses sustained by it in performing its contract with the United States for the construction of the outlet works for Sardis Dam on the Little Tallahatchie River, near Sardis, Miss., which losses were occasioned by an innocent misinterpretation of the contract by the corporation and by an extended delay in approving materials by the United States.

STATEMENT

This claim was first filed in the Court of Claims and an adverse decision rendered, but this decision was obviously based on legal rather than equitable grounds.

The bill was introduced in the Senate as S. 752, 81st Congress, and passed that body, but reached the House too late in the session for action. The committee has studied the basis for the claim and recommends enactment of the bill in the amount of $142,007.75, as reduced from the original amount of $191,799.05.

The Department of the Army and the Department of Justice both have submitted reports, in neither of which are objections to enactment of this bill.

A bill for the relief of this same claimant in the same amount was reported favorably by the Senate Judiciary Committee in the 81st and 82d Congresses. The bill for the relief of this claimant passed the Senate and was reported by the House Judiciary Committee in the 81st Congress.

On May 2, 1938, E. J. Albrecht Co. entered into a contract with the United States Government for the construction of outlet works for the Sardis Dam. The contract price was approximately $864,000 based on unit prices for different classes of work. The contract required that work be commenced within 10 days after receipt of notice to proceed and be completed within 400 days. The contractor received the notice to proceed on May 11, 1938, to be completed, if within the 400 days provided, on or before June 15, 1939. Extensions of time totaling 156 calendar days were allowed pursuant to the terms of the contract, and work was fully completed and accepted on November 18, 1939, which date was within the time fixed for completion by the extensions granted.

The construction work contemplated under this contract consisted of a number of closely related (though distinct) items. Certain of them were above the dam, and certain of them were below. Above the dam, there was to be constructed a channel, referred to as an "approach channel." This necessitated excavation of a rather deep channel, and the placing of impervious material in the bottom and on the sides. This, in turn, necessitated the placement of a layer of rolled fill which varied in thickness from 3 to 10 inches.

The next item required was what is referred to as an "intake approach channel." It, too, required, substantially the same construction basis, excavation of the channel, and lining with impervious material, either concrete or rolled fill or backfill. The third item consisted of certain gates, which were controlled from an operating house, and controlled the flow of water into the next section of the project. Obviously, the construction of this item of the project necessitated much excavation and the construction of the building and the gates and other operating machinery incident thereto. The fourth item was what is referred to as a transition section and consisted of certain large conduit which was to be laid through or underneath a hill or ridge. This item required a large amount of excavation and the placing of a large amount of concrete, rolled fill, and backfill, the upstream side of which had to be of impervious materials. The next of fifth item was what is referred to as the "stilling basin," into which this conduit emptied. The stilling basin was located below the dam and its construction required a large amount of very deep excavation, as deep as 50 to 60 feet. This item involved the placement of a large amount of concrete as well as the driving of foundation and sheet piles, and the placement of fill and backfill behind the walls when constructed. The stilling basin in turn emptied into the sixth, and last, item of the contract referred to as the outlet channel, to carry water back into the river bed below the dam. It necessitated much excavation and the placement of a large amount of fill and backfill and some riprap revetments.

Prior to the request for bids on this job the Government had made numerous sample or test borings and the bidders were given the benefit of the showing as to the structural characteristics at the various locations and depths. The Albrecht Co. estimated that there would be required a total of 541,000 cubic yards of excavation, of which the

test borings indicated 122,000 cubic yards were of such a nature that it could not be used on the job and therefore would have to be wasted, and disposed of otherwise than on the job itself. The Albrecht Co. estimated that there would be required a total of 422,000 cubic yards of rolled fill, and making the customary allowance of 20 percent for shrinkage and compaction, that something like 85,000 cubic yards of borrow pit material would have to be supplied.

The use of the (approximately) 419,000 cubic yards of material which would be obtained by excavation on the job was predicated, in addition to its being the proper material, upon its being in the proper shape for using at the time it was to be used. Even if the material were acceptable for use in all details, except moisture content, the moisture content might be so high as to make said material unacceptable at that particular time. In such a contingency, the contract provided for a method of processing the material so as to accelerate evaporation of moisture therefrom, and therefore reduce the moisture content to an acceptable percentage. In case such material could not be, or was not, so treated as to make it usable, substitute material might be used from borrow pits. The process of accelerating evaporation included a procedure whereby the material would be exposed to the sun and wind by loosening it, or turning it, either by plowing it or harrowing it. In case it still contained a moisture content which the Government engineers determined to be excessive, the contractor was permitted to place a thin layer of it in place, and then require a delay in tamping until the necessary evaporation had taken place. Each and every step in this process entailed delays and the contractor, during the summer of 1938, began to request permission to use dry borrow pit material rather than suffer the necessary delays incident to this material drying. The Albrecht Co. was informed it could use borrow pit material but that the Government would allow no additional payment for excavating it. Later the use of borrow pit material was authorized (which presupposes additional payment therefor) but this claim is based partially upon the delay of the Government in so authorizing and thereby causing the company loss.

Another element of this claim is the delay, alleged by Albrecht to have been unreasonable, in approving the gravel aggregate to be used in concrete construction. This stems from the percentage of chert contained in the gravel, and whether such percentage was within the allowable under the contract. Chert is explained to be an "impure, flintlike stone, fibrous in character, which is capable of absorbing moisture which upon freezing causes the stone to expand, and if chert gravel is used in a concrete facing it will pop out and leave pockmarks."

Much correspondence passed between the Government and the contractor on this matter, the net result being that the contractor used considerable of this gravel aggregate (containing chert) in the construction below a certain agreed level, and imported a gravel aggregate at a considerable additional expense to it, for construction of the remainder of the project, primarily the part wherein appearance was an element. Delays were necessarily incident to this controversy and the losses occasioned by such delays also enter into this claim as an element.

A third element of damages herein is that by reason of the delays incident to the gravel controversy, the contractor was not permitted

to excavate and construct the stilling basin according to his work plan, and thereby he suffered losses.

There appears to be no question but that the contracting firm suffered losses on this job. It estimates its loss at $191,799.05. The Court of Claims by two different methods of computation set the losses at either $142,007.45 or $142,120.

The award provided for in this bill represents the lowest responsible estimate as to the amount of loss sustained by the claimant.

This brings the committee to the real point involved in this bill, that is, whether the equities of the case are such as to justify the allowance of the claim, even though legally its disallowance was justified. Unquestionably the finding of the Court of Claims settled the legal side of any controversy that existed between the Government and the E. J. Albrecht Co., when that court found that "the denial * * * of plaintiff's claim * * * was not arbitrary or unreasonable." Confining the opinion to the conclusion just set forth, the committee feels that had the opposite conclusion been reached by the contracting officer and the Chief of Engineers such a conclusion would have been sustained likewise.

Certainly one equity in the claimant's favor is the unquestioned fact that claimant contractor lost money on the construction job, although the amount of such loss is variously estimated to be $142,007.75, $142,120, or $191,799.05.

The Government recognizes that the events incident to this were such as to constitute a changed condition "for which adjustment might equitably have been made under the terms of the contract." Even though the Government determined these facts adversely to the claimant in the first instance, it, the Government, speaking through the Department of the Army, feels that the claim should be allowed. The recommendation by the governmental agency most concerned with this contract is certainly of some persuasion.

Thus, though the committee agrees with the determination of the Court of Claims based upon strictly legal grounds, the committee feels that there is sufficient equitable considerations which warrant it in recommending favorable consideration of this bill, as amended.

Attached hereto and made a part of this report are the following:

(1) Letter of May 10, 1949, from the Department of the Army to the Attorney General.

(2) Letter of July 25, 1949, from the Justice Department to the late chairman of this committee, Hon. Pat McCarran.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 10, 1949.

The honorable the ATTORNEY GENERAL.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter of March 3, 1949, requesting the views of the Department of the Army on S. 752, Eighty-first Congress, first session, a bill for the relief of the E. J. Albrecht Co.

The purpose of the measure is to authorize and direct payment of the sum of $191,799.05 to the E. J. Albrecht Co. in full satisfaction of its claim against the United States for losses sustained under a contract for the construction of the outlet works for Sardis Dam on the Little Tallahatchie River near Sardis, Miss.

The claim has been the subject of a suit before the Court of Claims (105 C. Cls. 353) which tribunal dismissed the plaintiff contractor's petition. The suit brought in the sum of $194,583.11 was based on alleged excess costs incurred by plaintiff in excavation, rolled fill and backfill work, and was predicated upon (*a*) rejection of local gravel and alleged delay before the gravel controversy was terminated,

and (*b*) the rulings of the contracting officer with respect to the use of excessively wet impervious material for fill. In its findings, the court determined that the plaintiff's damages—which appear not to be in dispute—were $142,007.75, based on an engineering estimate of the fair cost of excavation, rolled fill, and backfill without disruption to work due to concrete aggregate and wet materials. Briefly the excavated materials in the stockpiles failed to dry except for a thin crust on the surface. Therefore, in order to use the stockpile material for rolled fill in the approach channel, it was necessary either to reduce the water content to that allowed by the specifications prior to placing material in the fill, or to place a layer of wet material in the fill and delay rolling until it reached the required consistency. The contracting officer denied the contractor's request for permission to use dry material from borrow pits rather than the excessively wet stockpile material which necessitated special treatment with resultant increased costs.

No satisfactory evidence was adduced to establish that the gravel controversy contributed to the contractor's loss.

Reference is made to letter, Bureau of the Budget, to the Secretary of Defense, dated February 16, 1949, referring to S. 2441, Eightieth Congress, in which the Bureau of the Budget propounded the question as to "whether relief can justly be allowed in this case without granting similar relief in many other cases in which unusually adverse weather conditions result in loss to the contractor."

Since the expense incurred by the contractor due to use of wet material in the embankment is considered to constitute a changed condition for which adjustment might equitably have been made under the terms of the contract, the Department of the Army does not oppose enactment of the bill in the reduced sum of $142,007.75.

Sincerely yours,

GORDON GRAY,
Acting Secretary of the Army.

OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, July 25, 1949.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 752) for the relief of the E. J. Albrecht Co.

The bill would provide for payment of the sum of $191,799.05 to the E. J. Albrecht Co., an Illinois corporation, in full satisfaction of its claim against the United States for reimbursement for actual losses allegedly sustained by it in the performance of a contract entered into with the United States.

In compliance with your request a report was obtained from the Department of the Army concerning this legislation. That report, which is enclosed, states that the claim was the subject of a suit before the Court of Claims (105 C. Cls. 353) which dismissed claimant's petition. The report further states that the suit which was brought in the sum of $194,583.11, was based on alleged excess costs incurred in excavation, rolled fill and backfill work, and was predicated upon (*a*) rejection of local gravel and alleged delay before the gravel controversy was terminated, and (*b*) the rulings of the contracting officer with respect to the use of excessively wet impervious material for fill. The Department of the Army notes that in its findings the court determined that claimant's damages, which appear not to be in dispute were $142,007.75, based on an engineering estimate of the fair cost of excavation, rolled fill and backfill without disruption to work due to concrete aggregate and wet materials. It appears that the excavated materials in the stockpiles failed to dry except for a thin crust of the surface and that in order to use such material for rolled fill in the approach channel, it was necessary either to reduce the water content to that allowed by the specifications prior to placing material in the fill, or to place a layer of wet material in the fill and delay rolling until it reached the required consistency. The report states that the contracting officer denied claimant's request for permission to use dry material from borrow pits rather than the excessively wet stockpile material which necessitated special treatment with resultant increased costs.

The Department of the Army observes that no satisfactory evidence was adduced to establish that the gravel controversy contributed to the contractor's loss. The report directs attention to a letter from the Bureau of the Budget to the Secretary of Defense, with respect to a prior bill introduced in the Eightieth Congress, in which the Bureau of the Budget propounded the question as to

"Whether relief can justly be allowed in this case without granting similar relief in many other cases in which usually adverse weather conditions result in loss to the contractor." The report concludes with the statement that since the expense incurred by the contractor due to the use of wet material in the embankment is considered to constitute a changed condition for which adjustment might equitably have been made under the terms of the contract, the Department of the Army does not oppose enactment of the bill in the reduced sum of $142,007.75.

The Bureau of the Budget has advised this Department that it recognizes equities in the claimant's position, but since the Court of Claims appears to have given careful consideration to the merits of the claim in question, the proposed legislation should not be considered as being in accordance with the program of the President.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

STATEMENT OF JAMES M. BARNES ON S. 752 (81ST CONG., 1ST SESS.)., BILL FOR THE RELIEF OF THE E. J. ALBRECHT CO., BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY

My name is James M. Barnes and I appear as attorney for the claimant, E. J. Albrecht Co., of Chicago, Ill. I shall not repeat the factual basis in connection with this company's claim. Mr. B. J. Fry, vice president of the company, has just outlined for your committee clearly and in detail the various transactions under the contract between this company and the United States Government through the Army engineers. It is my purpose to discuss briefly the legal aspects of the claim, the import of the recommendations made by the executive departments involved, and the province of Congress in granting equitable relief in claims such as the one here involved.

As the records of your committee clearly show, the claimant has exhausted all its administrative and legal remedies. It has felt, from the very inception of this matter, that the Government was not legally liable under the contract. However, it nevertheless, first pursued all the legal remedies available to it. Now, having settled the legal side of the controversy, it looks to Congress for equitable reimbursement of its losses.

It is well known that Government employees may not allow a claim against the Government no matter how great the equities if its disallowance can be sustained on legal grounds. In the original forum before the Army, the contracting officer could not grant an additional amount for failure to authorize "borrow-pit" material because of a procedural lapse by the claimant in not appealing within 30 days of the ruling by the Government officer. Had the Army allowed the claim, when legally it could have been defeated, such action would have resulted in the General Accounting Office surcharging the certifying officer in the amount allowed. The Comptroller General has consistently held that a Government employee may not create or revive a claim against the Government but must disallow it if there are legal grounds to sustain the latter position. Equities, in that forum, play no part in the consideration no matter how manifest. However, at a later date when the Army did not have to limit its considerations to those of a legal nature, it could and did quite properly, at the request of your committee, consider all pertinent factors and arrive at a different conclusion. The letter of May 10, 1949, signed by Gordon Gray, Acting Secretary of the Army, in the last paragraph stated:

"Since the expense incurred by the contractor due to use of wet material in the embankment is considered to constitute a changed condition for which adjustment might equitably have been made under the terms of the contract, the Department of the Army does not oppose enactment of the bill in the reduced sum of $142,007.75."

On that point, I would like to say that we are perfectly willing to have the claim reduced to that amount. There have been 3 separate audits, as heretofore testified, 1 in the sum of $191,799.05 by the company and 1 by the FBI in the sum of $180,408.18, but the Court of Claims computed the damage at $142,007.75 and we are willing to stand on that amount. It is just merely reimbursement for these specific items.

In the letter of the assistant to the Attorney General, dated July 25, 1949, he is taking a completely legalistic approach. He admits that the Bureau of the Budget recognizes the equities in the claimant's position, but states that since the Court

of Claims appears to have given consideration to this matter, it should be disallowed. Of course, that is the legalistic approach. That recommendation is of no assistance to you in evaluating the overall merits because he has not considered the equities of the case.

As can be readily seen from a review of the record of this case in the Court of Claims and the material presented to you here both by Mr. Fry and the affidavit of Mr. Albrecht, this claim is one involving a question of honor, equity, and justice. There is no way for this claimant to obtain relief except through equity as exercised by Congress in its sound discretion. If you recognize the moral obligation of the Government to this claimant, then you can't do other than recommend the passage of this bill.

The United States Supreme Court has repeatedly upheld the principle that the "debts" of the United States for the payment of which article I, section 8, of the Constitution authorizes Congress to collect taxes, include those based on equitable or moral obligations as well as rights which are enforceable in legal proceedings in the courts. See *United States* v. *Realty Co.* (163 U. S. 427 (1896)); *United States* v. *Cook* (257 U. S. 523 (1922)); *Marion etc., By* v. *United States* (270 U. S. 280 (1926)); *Cincinnati Soap Co.* v. *United States* (301 U. S. 308 (1937)); *Pope* v. *United States* (323 U. S. 1 (1944)).

In the Realty Co. case (p. 440), supra, which was decided in 1896, the Supreme Court gave the following definition of the term "debts" as used in article I, section 8, of the Constitution:

"What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The Nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature; such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law."

This definition has been consistently adhered to by the courts. It was made the basis of the decision of the Circuit Court of Appeals, Third Circuit, in *United States Sugar Equalization Board* v. *P. DeRonde & Co.* (7 F. (2d) 981 (1925)). and was again set forth in its entirety by the Supreme Court in its opinion in the Cincinnati Soap Co. case (1937), supra, wherein the Supreme Court also made reference to a long list of congressional acts directing the payment of claims of a purely moral nature "as evidence of what has been the practice of Congress since the adoption of the Constitution."

The correctness of the position maintained in this case by the claimant company is attested by specifications subsequently required by the Army engineers for similar work. They were exactly as contended for by the claimant company from the inception of its contract out of which these damages arose. Thus, there appears little possibility that enactment of this bill will set any precedent because likelihood of similar damage was eliminated by new specifications.

The passage of S. 752 is necessary to do substantial justice by this contractor by reimbursing its out-of-pocket losses. In this manner, the moral obligation incumbent on the Government to adjust the equities will be fulfilled. Congress alone can discharge the responsibility and it is, accordingly, urged that your committee recommend favorably to the full committee the passage of this legislation.

STATE OF ILLINOIS,
County of Cook, ss:

E. J. Albrecht, being duly sworn, deposes and says:

I am, and all times recited herein have been, president of E. J. Albrecht Co., an Illinois corporation, and am familiar with the facts and circumstances upon which the private bill for relief of E. J. Albrecht Co. has been proposed.

On May 2, 1938, the company entered into a contract with the United States Government, Corps of Engineers, United States Army, for furnishing of all materials and the performance of work necessary for construction of the outlet works for Sardis Dam on the Little Tallahatchie River near Sardis, Miss. Because of an innocent misinterpretation by the contractor and extended delay in approving material, later approved by the Army, the costs of the company in performing were increased by $191,799.05, no part of which amount has been paid. Appro-

priate appeals for relief were taken to Army authorities and to the Court of Claims of the United States, both of which were denied solely on technical legal grounds. No fault is found with the disallowance of the claim by Army personnel or by the decision of the Court of Claims. Army personnel were bound by departmental rules and regulations and could not render a decision based on equities, however manifest. The Court of Claims in like manner had to be guided by strictly legal concepts and on such grounds could only find as they did. It is not proposed here to advance a legal argument, but to proceed solely on equity and justice. I also wish to stress that at no time was fault ever found with the company's work and performance under the contract, and in fact, the job, when finally completed, was accepted by the Government well within the time fixed by the contract and amendments thereto. The Army's supervising engineer for the district in which the project was located stated that the work performed by the contractor was "well done."

Briefly put, the contract called for construction of an open inlet channel, a control tower, a covered 19-foot-wide conduit, a stilling basin, and an open outlet channel which functioned as a giant faucet controlling the amount of water that would flow from the Tallahatchie River into the Mississippi River when the latter was in flood stage. This operation called for large-scale excavating and pouring of concrete. Because of the tremendous subsurface water pressure which resulted in geysers when excavating reached a certain depth, almost split-second timing of the various stages of the job was required for efficient and low-cost performance. If, in attempting to meet this schedule, the contractor suffered financially without fault on its part, and such can be shown, then the amount of loss should be reimbursable. This must be so because the Government benefited by the additional work performed.

Specifically, the contract provided that earth to be "suitable" for use as fill could have only a certain maximum amount of moisture in its composition; and in the event earth excavated from other parts of the construction job did not meet that test, such earth would be stockpiled until its use was authorized. The contract further provided that, in the event suitable material was not available from specified excavations, it would be secured from designated borrow areas (C, C–1, and D) and payment would be made for borrow excavation as set forth in the specifications. It appears that authorization for such borrow excavation could not be capriciously withheld if the excavated earth did not meet the specifications for any reason whatsoever, and especially where subsurface water and severe rains caused the condition. To so withhold authorization would greatly delay the work, it being a step-by-step job, and, therefore, necessarily against the Government's best interests. It cannot be conceived that a Government employee would so act. Accordingly, when authorization to use approved borrow pit material was not given, the company, although not required to do so by the contract, performed at greatly increased costs to it, services never contemplated by either of the parties. This failure to authorize use of borrow pit material required the company time and time ad nauseam with dogged persistence to reharrow, reroll and re-turn the wet excavated earth both on the stockpile and in the fill so that it eventually reached a state "suitable" for use. This operation, unusual in the extreme, greatly prolonged that particular part of the work and unduly and unjustifiably increased the costs of performance.

When, upon completion of the job, the company requested payment for additional costs created by failure to authorize borrow pit material, it was advised that such request was too late as not made within 30 days of the "ruling" of the Government officer. Actually the Government officer did not give a categorical "no" to the request but only orally stated "consult the contract. I can only be guided by it." In the manner of its making and because it was not in writing, the company did not consider such failure to act an appealable decision under the terms of the contract. Because of this position innocently and honestly arrived at by the contractor, its claim for relief was refused hearing by Army authorities because of noncompliance with the appeal provisions of the contract. The Court of Claims sustained the Army's contention that it had no power to grant relief. While such decisions may be technically proper they definitely deny justice and equity to one whose only fault was a misinterpretation of a contract provision defining an appealable issue. In analogy it may be said that while there is a substantive right of the contractor to be reimbursed, the procedural technique for relief is gone. Neither the Government nor the Court of Claims denied that the contractor did all in its power to dry the excavated earth and that its overly moist condition when excavated accelerated by greater than normal rains (in one period recordbreaking) caused this condition. Nor did the Gov-

ernment or the Court of Claims deny that the company's costs had been greatly increased thereby.

The treatment of the gravel situation also added to the undue financial burden forced upon the company. Briefly stated within the limits of clarity, the contract specified a certain type of gravel having no deleterious "quantities" of certain specified substances. The local gravel which the contractor proposed to use and which it contended met contract specifications was rejected by the Government officer. The contractor contested this decision and, in explaining his position the Government officer stated that such gravel contained chert, although this substance was not mentioned in the specifications as being a substance which could cause rejection if present in "deleterious quantities," he also stated that where concrete aggregate containing chert is used on exposed surfaces subject to freezing weather, there is a possibility the chert might cause "pop-outs" which may pockmark the surface. These arguments based on presence of chert and eye appeal were improperly advanced because not matters contained in the contract either specifically or in a "catch all" clause. As proof that this statement is correct, the Government officer subsequently and after 5 months of conferences and letters, did write a change order authorizing the use of local gravel as originally proposed by the contractor below the frostline and of imported gravel above the frostline at a higher cost which the Government agreed to pay. This is complete and satisfying proof that the original gravel conformed to contract specifications. In view of these circumstances, what the Government should have originally done was to provide for 2 separate sets of specifications for concrete, 1 for use below the frostline and the other for use above the frostline. That the contract did not so provide should not be a burden chargeable to the company as it was not their omission. The financial loss to the contractor was not occasioned by the direct additional cost for the imported gravel which was reimbursed to it by the Government but rather bacause of other additional costs necessarily incident to the 6 months' delay in giving final authorization for imported gravel. In explanation for this 6 months' delay, it must be stated that a change order issued by the Government site officer is not binding on the Government until approved by the chief of the department in Washington. For the contractor to go ahead without that final approval would be the irresponsible action of an imprudent businessman. That the contractor was reasonable in not performing until final approval was given is amply justified by the course of conduct in this case.

As previously recited, split-second timing was required for all components of performance and, for the contractor to carry a deep, wet excavation to its extreme depth before he knew what kind of concrete aggregate would finally be approved for the structure at the bottom of the hole would approach economic suicide and technical foolhardiness.

A brief description of the process might help to appreciate these conditions more readily. While fighting this excavation down to subgrade, water will rush in from the side slopes and boil up geyserlike from the bottom, requiring continued heavy expenditures for holding the side slopes, protecting adjacent ground and structures, stabilizing the bottom, pumping, and reexcavating washed-in material. This heavy expense will go on 24 hours per day and 7 days per week essentially undiminished until all concrete is poured and the structure backfilled. To be economically possible for a contractor to perform this work, he should be prepared by suitable and final authorization from the Government immediately after bottoming, to set up pumps, drive piles, pour concrete, and place backfill. Here we have a condition where even a moderately prudent contractor could not go ahead with the work which ordinarily must be pushed with extraordinary vigor and speed.

The reasons for additional cost are thus readily apparent. In the absence of a concrete aggregate decision for months, crews and equipment idled at minimum efficiency and work in this hole was performed only as a last resort when there was no other work to do, so as to utilize some of the equipment and not lose the organization. The resulting increased costs can readily be imagined. Firther, it is axiomatic that proper planning in a section of the country which has wet seasons, calls for performing the deep, wet mark in the dry season of the year so as not to be bothered with surface water and washes from the original ground surface in addition to the subsurface water. This was originally contemplated. The Government's unforeseeable delay of close to 6 months, over which the contractor had no control whatsoever, threw the work into the rainy season and transformed the entire area into a sea of mud and added tremendously to the cost of excavating that normally would have been performed in the dry season. During the period

referred to, rains of unusual severity and frequency occurred, setting a record-breaking fall.

This additional financial burden would not have occurred had the aggregate been approved in the time contemplated by the contract and no additional other aggregate required by the Government as an afterthought. To require that the contractor bear indirect additional costs necessarily attendant upon direct additional costs caused and borne by the Government is wholly unjustifiable and inequitable, whatever it may be legally. It cannot reasonably nor equitably be argued that where one admits his liability for direct costs he can deny his liability for indirect costs necessarily incident to such direct costs and inseparably interwoven.

By reason of all of the foregoing, the company was forced to suffer an inequitable and unjustifiable loss in the amount of $191,799.05 as determined by the company's auditor (see attached intemization). The FBI auditors who reviewed the figures and made their own audit found the actual loss to be $184,408.18. The Court of Claims, while agreeing that the company suffered a loss, found it to be $142,100 but denied recovery purely on technical legal grounds. In addition, the court found that, based upon engineering estimates prepared by both the contractor and the Government, the contractor's was more accurate and the costs would have been very substantially reduced had Government personnel authorized use of borrow pit material in lieu of the wet dirt in meeting contract specifications. This is found to be true even though such authorization would have resulted in increasing the quantity of excavated material approximately one-third. It may very well be that the reviewing personnel for this body may fix the final amount to be awarded somewhere between the above figures which would be eminently acceptable to the contractor.

Complete vindication for the company's position here set forth and its right to recover appears from subsequent Army specifications, as amended, for similar construction. These later specifications called for a type of gravel for certain portions of the work which could only be met by use of Mississippi River gravel (exactly as here argued by the company) and local gravel for other portions of the work, again exactly as argued by the company, and the identical gravel originally offered in this case. That is to say, two sets of specifications for concrete aggregate. In connection with the wet earth situation, the new specifications provide that if the excavated material exceeds the optimum moisture content by a certain percentage it will be wasted (considered "unsuitable") and authorization given to utilize sources of suitable material. Again, exactly on all fours with the company's position. No better proof exists that the company's cause is proper and should be allowed than this Army action taken so as not to perpetuate, in other cases, the inequity and injustice borne by the contractor in the present case.

The facts and circumstances recited herein are factual and true and your affiant will be glad to submit confirmatory evidence of any of such matters.

E. J. ALBRECHT CO.
E. J. ALBRECHT, *President.*

Sworn to before me this 30th day of March 1948.

[NOTARY SEAL] M. J. VOLLER.

My commission expires October 15, 1950.

Outlet structures for the Sardis Dam—Actual loss on excavation, rolled fill, and backfill

[Labor costs for item 1, common excavation; item 2, rolled fill; item 3, backfill. Figures taken from final time distribution]

1. Constructing and maintaining haul roads		$5,454.29
2. Structure excavation, scrapers, 140,828 cubic yards		4,897.01
3. Structure excavation, machine loading, 117,191 cubic yards		9,061.92
4. Structure excavation, hand, 3,015 cubic yards		3,588.63
5. Stockpile excavation, tractors and scrapers, 199,045 cubic yards		7,416.80
6. Stockpile excavation, machine loading, 107,042 cubic yards		4,939.32
7. Borrow pit excavation, 16,443 cubic yards		851.25
8. Approach channel excavation, 190,898 cubic yards		11,013.54
9. Outlet channel excavation, 143,778 cubic yards		8,699.25
10. Installing, operating and removing pumps		15,847.70
11. Installing and removing wellpoints		3,849.42
12. Embankment, rolled fill, 284,870 cubic yards		12,724.56
13. Channel blanket, rolled fill, 103,880 cubic yards		3,298.54
14. Backfill, 7,079 cubic yards		6,182.26
15. Dress up spoil areas and borrow pits		262.77
16. Shop labor and equipment maintenance, 75 percent of $39,360.33		29,520.25
Total		127,607.51
Field overhead, field engineers' salary and bonus paid to superintendent, foremen, and operators are items of cost charged against the entire job. The above items of work, however, must share part of this expense in proportion to the amount of labor expended on them.		
Total payroll exclusive of field overhead	$257,314.65	
Items 1, 2, and 3 accounted for 49.6 percent of the total payroll and must carry 49.6 percent of this indirect cost.		
Field overhead	15,663.42	
Engineer	7,990.15	
Bonus	11,735.82	
	35,389.39	
49.6 percent of $35,389.39		17,553.14
Total salaries, wages, etc., for items 1, 2, and 3		145,160.65
Total payroll for entire job	$272,978.07	
Engineers' salary	7,990.15	
Bonus	11,735.82	
Total salaries, wages, etc., for entire job	292,704.04	
Forward		145,160.65
Items 1, 2, and 3 account for 49.6 percent of the total.		
Items 1, 2, and 3 must carry 49.6 percent of all insurance, social-security tax and OAB tax which are directly proportional to wages and salaries.		
Insurance: 49.6 percent of $23,281.90		11,547.82
Social-security tax and OAB tax: 49.6 percent of $11,366.38		5,637.72
Items 1, 2, and 3 must also carry a proportionate share of the following indirect costs. This proportion is again a function of the wages and salaries paid, as the longer a job lasts and the higher the payroll, the higher will be these costs. Whereas, increases in the cost or amount of materials supplied to the owner will have little or no effect on these costs.		
General miscellaneous expense: Includes freight on plant, State taxes, etc., 49.6 percent of $25,810.45		12,801.98
Camp and plant installation: 49.6 percent of $9,101.28		4,514.23
Miscellaneous small tools and supplies: 49.6 percent of $19,619.09		9,731.07
Utilities: 49.6 percent is low for this as it consists largely of electric power bills, most of which was us edfor operating electric pumps: 49.6 percent of $10,530.65		5,223.20
Plant rental for equipment owned or controlled by E. J. Albrecht Co.		62,021.00
Rental of wellpoints and wellpoint pumps		4,507.55

Outlet structures for the Sardis Dam—Actual lose on excavation, rolled fill, and backfill—Continued

Rental of electric pumps		$546.67
Subcontracts for earth hauling and rental paid by E. J. Albrecht Co. for use of equipment owned by subcontractors		52,427.83
Forward		314,119.72
Petroleum products: 75 percent of this item is charged to items 1, 2, and 3 as these products are used principally in the cranes, tractors, and pumps when working on these items of the contract: 75 percent of $44,183.28		33,137.46
Cables and teeth: 75 percent of $4,224.12		3,168.09
Explosives: 100 percent of $247.36		247.36
Equipment repair:		
Cranes, 60 percent of $2,618.64	$1,571.18	
Dragline and clamshell buckets, 100 percent	782.49	
Tractors, scrapers, 100 percent	25,125.90	
Pumps, 100 percent	2,352.65	
Rollers, rooters, and graders, 100 percent	210.82	
		30,043.04
Bond, 1½ percent of $380,715.67		5,710.74
		386,426.41
Adjustment agreed upon by both sides	$725.11	
Additional	112.25	
		837.36
		385,589.05
Payments by Government:		
Common excavation	170,813.00	
Rolled fill	19,437.50	
Backfill	3,539.50	
		193,790.00
Actual loss		191,799.05

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Calendar No. 1149

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1137

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FRANCISCA ALEMANY

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5546]

The Committee on the Judiciary, to which was referred the bill (H. R. 5546) for the relief of Francisca Alemany, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

Strike out after the enacting clause and insert in lieu thereof the following:

That, for the purposes of the Immigration and Nationality Act, Francisca Alemany shall be held and considered to be the minor child of her parents, Mr. and Mrs. Rafael Alemany, lawful permanent residents of the United States.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to preserve for Francisca Alemany the status of a preference quota immigrant as the minor child of her parents.

The bill has been amended to conform to the committee policy of not recommending for enactment bills which direct that visas be issued in individual cases.

STATEMENT OF FACTS

The beneficiary of the bill is a 32-year-old native and citizen of Spain who presently resides in that country. Her parents are lawful permanent residents of the United States, and she has a brother who is also a lawful permanent resident. The father of the beneficiary is stated to be the greatest expert on the physical structure of the eye for special surgery. He is employed as a medical artist by the Sudler

& Hennessy Co., New York City, and many well-known physicians and surgeons urge that he remain in this country. He is most anxious to have his daughter join the family in this country and states that he will feel obligated to return to Spain in the event the beneficiary is not able to enter this country.

A letter, with attached memorandum, dated June 14, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington, D. C., June 14, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H. R. 5546) for the relief of Francisca Alemany, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the New York, N. Y. office of this Service, which has custody of those files.

The bill would provide that the beneficiary may be admitted to the United States for permanent residence notwithstanding any provisions of sections 201, 202, and 203 of the Immigration and Nationality Act, if she is found to be otherwise admissible under that act.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE FRANCISCA ALEMANY, BENEFICIARY OF H. R. 5546

Information concerning the beneficiary of the bill was furnished by the sponsor-father, Mr. Rafael Alemany-Cremades, a legal resident alien of the United States who resides at 760 West End Avenue, New York, N. Y.

The beneficiary, Francisca Alemany, also known as Francisca Alemany-Llado, and Panchita, a native and citizen of Spain, was born on October 18, 1922. She resides at Pelayo 22, Barcelona, Spain. The alien, a social worker and student, is dependent upon her father for support. She attended elementary school and high school for a period of 10 years in her native country. Her mother and brother, both citizens of Spain, who reside with the sponsor, are legal residents of the United States. Another brother, a citizen of Spain resides in Rio de Janeiro, Brazil. The beneficiary has never been in the United States.

The sponsor's assets in the United States consist of a regular checking bank account, and a savings bank account with a combined present-day balance of approximately $3,300. His personal effects are estimated at $2,500. He is employed as a medical artist by the Sudler & Hennessy Co., 130 East 50th Street, New York City and earns a salary of $175 a week.

The Administrator of the Bureau of Security and Consular Affairs also submitted the following report on the case, dated June 28, 1955:

BUREAU OF SECURITY AND CONSULAR AFFAIRS,
June 28, 1955.

Mr. WALTER H. BESTERMAN,
Legislative Assistant, Committee on the Judiciary,
House of Representatives.

DEAR MR. BESTERMAN: I refer to H. . 5546, for the relief of Francisca Alemany which was introduced by Congressman Walter under date of April 13, 1955.

Miss Alemany is the daughter of Rafael Alemany, former professor at the University of Barcelona in the field of medical illustration. Mr. Alemany came to the United States as a guest of Dr. Ramon Castroviejo, a noted eye surgeon of New York City. Because of Mr. Alemany's outstanding skill as a medical artist in reproducing pathologic and other material for the teaching of medical subjects, many well-know physicians and surgeons urged that he become a permanent

resident of the United States. This was made possible through the enactment of Private Law 322, 82d Congress, on October 11, 1951.

Mr. and Mrs. Alemany are most anxious to have their daughter join them in this country. She is registered on the waiting list of the consulate general at Barcelona, Spain, under date of September 21, 1948, as an applicant for a non-preference immigrant visa under the Spanish quota. However, as the quota for Spain is heavily oversubscribed, it is likely that many years will elapse before she will be able to join her parents in this country. The enactment of H. R. 5546 will accomplish this purpose without the protracted wait which she otherwise faces before she could join her parents here. To permit her to do so at this time would serve as a recognition of the contribution to this country of the services of her father, who has recently been spoken of as the greatest expert on the physical structure of the eye for special surgery.

If this relief is not granted we face the possibility that Mr. and Mrs. Alemany will decide to return to Spain to join their daughter and that this country will lose the benefit of his outstanding contribution to American medical science.

Sincerely yours,

SCOTT MCLEOD, *Administrator.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 5546), as amended, should be enacted.

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Calendar No. 1150

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1138

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KATHARINE LAJIMODIERE, NEE SCHNEEBERGER

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1118]

The Committee on the Judiciary, to which was referred the bill (S. 1118) for the relief of Katharine Schneeberger, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. Strike all after the enacting clause and insert in lieu thereof, the following:

That, notwithstanding the provision of section 212 (a) (9) of the Immigration and Nationality Act, Katharine Lajimodiere, nee Schneeberger, may be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of that Act: *Provided*, That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice had knowledge prior to the enactment of this Act.

2. Amend the title of the bill to read:

A bill for the relief of Katharine Lajimodiere, nee Schneeberger.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waive the excluding provision of existing law relating to the conviction of crimes involving moral turpitude in behalf of the wife of a United States citizen member of our Armed Forces.

STATEMENT OF FACTS

The beneficiary of the bill is a 30-year-old native and citizen of Germany who was married on May 7, 1955, to a United States citizen member of our Armed Forces. She presently resides in Munich, Germany. Her husband is stationed in Minneapolis, Minn. The

beneficiary was refused a visa because of 3 convictions for theft, 2 in 1945 and 1 in 1949. Without the waiver provided for in the bill, she will be unable to enter the United States to join her husband.

A letter, with attached memorandum, dated July 12, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 12, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1118) for the relief of Katharine Schneeberger, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the St. Paul, Minn., office of this Service, which has custody of those files. According to the records of this Service, the correct name of the beneficiary, since her recent marriage, is Katharine Lajimodiere.

The bill provides that the beneficiary shall be considered to have been lawfully admitted to the United States for permanent residence as of the date of its enactment, upon payment of the required visa fee. It further provides for the deduction of one quota number from the appropriate quota for the first year that such quota is available.

The bill apparently is intended to provide for the issuance of an immigrant visa to the beneficiary notwithstanding the quota limitations of the Immigration and Nationality Act. However, it is drawn in a form that is usually used for beneficiaries who are residing in the United States.

It appears that the beneficiary is eligible to nonquota status and, if otherwise qualified, able to obtain a nonquota immigrant visa.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE KATHARINE SCHNEEBERGER, BENEFICIARY OF S. 1118

The beneficiary, Katharine Schneeberger, now Katharine Lajimodiere, a native and citizen of Germany, was born on March 11, 1925. She was married on May 7, 1955, and is presently residing at Ulfilasstr 38, bei Soller, Waldperlach, bei Munich, Germany.

The beneficiary is unemployed. She is a high-school graduate. Her income amounts to $50 per month sent by her husband, and about $25 per month contributed by her parents. She has no assets except a $15,000 equity in her family estate in Germany. Her parents and a brother reside in Germany. The beneficiary has always resided in Gerany and was a waitress from 1938 to 1952.

Information has been received that the beneficiary was denied an immigrant visa by the American consul at Munich, Germany, because of convictions for theft in 1945 and 1949. The committee may desire to make inquiry of the Visa Office of the Department of State for further information in this connection.

Information concerning the beneficiary was furnished by the husband and sponsor of the bill, Sgt. Ernest D. Lajimodiere, AF17300933, who is presently stationed at 514th Air Defense Group, Minneapolis, Minn. Mr. Kajimodiere was born on January 11, 1925, at Olga, N. Dak., and has served in the United States Air Force since January, 1951. His civilian occupation was that of a waiter.

Senator William Langer, the author of the bill, has submitted a number of letters and documents in connection with the case, among which are the following letters:

317TH MAINTENANCE SQUADRON,
APO 13, USAF,
September 20, 1954.

Hon. Senator WILLIAM LANGER,
United States Senate, Washington, D. C.

HON. SENATOR LANGER: In answer to your fine letter dated September 13, 1954, which informed me of the progress that you had made in behalf of my fiance Miss Schneeberger. I am deeply grateful to you for your time and effort expended in helping me process my marriage papers.

My fiance and I went to the German courts this morning along with the assistance of her attorney; it will be possible for the German courts to have her police record completely finished and will be cleared with the German courts so it will not prevent her from entering the United States. Her attorney said that she will be able to pick up her police clearance on Wednesday of this week and then my fiance could immediately contact the consulate authorities for a reevaluation of her admissibility to the United States.

As soon as my fiance receives her police clearance and reevaluation from the consulate authorities which will be this week I will have our group commander contact the proper authorities through military channels in order to discover the status of my marriage papers at Headquarters, 12th Air Force. I have already contacted the base air inspector to help me find out the status of my marriage papers and he has already begun investigating the undue delay of the papers. I have not been able to contact the consulate authorities because my fiance did not have her court completed so it was useless to have them work on her paperwork but as soon as the Attorney gives her the necessary clearance I will personally take my fiance to the consulate for another interview.

I will call up the fiance section at the consulate tomorrow in regard to the new law which you mentioned in your letter; it would be a great help in processing my fiance's visa.

Again thanking you kindly for your help.

Sincerely,

ERNST D. LAJIMODIERE.

317TH MAINTENANCE SQUADRON,
APO 13, USAF,
October 24, 1954.

Hon. Senator WILLIAM LANGER,
United States Senate, Washington, D. C.

DEAR SENATOR LANGER: First I wish to acknowledge your recent letter and I appreciate your thoughtful consideration shown toward me in helping me arrange my personal matters in regard to marriage to Miss Schneeberger.

I am still unable to get married because my fiance Miss Schneeberger does not possess all her necessary documents from the German courts, but our attorney has assured us that we will have all the courts and documents completed by this week so we can immediately have them evaluated by the consulate general in Munich. My fiance, the attorney, and I were granted an interview with the visa consul and he informed the attorney that when the German courts released the court proceedings in behalf of my fiance that they would issue her a favorable statement and a visa which would make it possible for us to be married.

I am again appealing to you for further help it will now be necessary for me to extend my overseas tour therefore I have submitted my request for a 30 days' extension results of which have not been returned, although I am gravely concerned about getting this extension which would allow me sufficient time in completing the paperwork and legal affairs before being returned to the Zone of Interior. I have tried to extend my overseas tour 1 year and then reenlisting to fill my own vacancy, but it has been turned down because I have already received my stateside assignment which prevents me from remaining another year over here. My fiance is encountering a difficult pregnancy and traveling such a great distance would be extremely strenuous for her so if I could obtain a year's extension of my overseas tour the baby could be born over here and then would be old enough to travel without any trouble. Would it be possible for you to contact Headquarters, USAF, and find out if it could be possible for me to be granted a year's extension of my overseas tour. With the pending regulation pertaining to marriage of German nationals there would not be any impediment if I remained here another year. My paperwork for a 30-day extension has been forwarded to Headquarters, Twelfth Air Force, APO 12, USAF,

for final approval and if it is disapproved I will be forced to leave here immediately because I have already completed my overseas tour and also was granted a 90-day extension which will expire this month. If you could also further contact that headquarters in my behalf perhaps I would be able to be granted this badly needed extension.

Thanking you once more for your kind help.

Sincerely yours,

ERNST LAJIMODIERE.

514TH AIR DEFENSE GROUP,
Minneapolis, Minn., February 12, 1955.

Senator WILLIAM LANGER,
United States Senate, Washington, D. C.

HON. SENATOR LANGER: I am again writing to you reference my fiance Katherina Schneeberger, presently residing at 38 Ulfilosstr, Waldpulach, Germany, my problem is as follows: I had written to her to register with the American consulate in Munich, so she could come over here under the German immigration quota and that she did as I had directed her to do, but when she asked the American authorities to help her at the consulate she was treated in an indifferent and cold manner.

In fact she has written to me recently and informed me that due to this incident at the consulate she almost had a miscarriage because her nerves were so shaken up that she was bed ridden for sometime. Is there some way that you could kindly calm down those consulate authorities to treat people like human beings because I was also given the same consideration when I was stationed in Munich. I would not have written to you about this matter, but we almost lost our child due to this unnecessary negative attitude of some individuals. I will appreciate any help on your part just so that it is possible for my fiance and I to be united.

Thanking you kindly for your consideration and help.

Sincerely yours,

ERNEST LAJIMODIERE.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1118), as amended, should be enacted.

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Calendar No. 1151

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1139

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DR. ELPEDIO DOSADO, AURELIA, WIFE, AND DEANNA, ELPEDIO, JR., AND AMBROSIA, THEIR CHILDREN

JULY 25, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1933]

The Committee on the Judiciary, to which was referred the bill (S. 1933) for the relief of Dr. Elpedio Dosado, Aurelia, wife, and Deanna, Elpedio, Jr., and Ambrosia, their children, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. In lines 4 and 5, change the name "Elpedio" to "Elpidio".
2. In line 5, change the name "Ambrosia" to "Ambrosio".
3. Amend the title of the bill to read:

"A bill for the relief of Doctor Elpidio Dosado, Aurelia, Deanna, Elpidio Junior, and Ambrosio Dosado."

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Dr. Elpidio Dosado, Aurelia, Deanna, Elpidio, Jr., and Ambrosio Dosado. The bill provides for the appropriate quota deductions and for the payment of the required visa fees. The bill has been amended to correct the spelling of the names.

STATEMENT OF FACTS

The beneficiaries of the bill are a 46-year-old father, his 47-year-old wife, and their 3 children, aged 17, 16, and 15, who are all natives and citizens of the Philippines. They entered the United States on September 17, 1950, at San Francisco, Calif., when the father and mother were admitted as students and the children were admitted as

visitors. The father is a physician and practiced in the Philippines. He has been studying ophthalmology at the Wayne University College of Medicine, Detroit, Mich. The wife has had training as a nurse. The children attend the Detroit public schools. The father has an approved visa petition for first preference under the Philippine quota, but due to the oversubscribed condition of that quota, the family is faced with a considerable wait.

A letter, with attached memorandum, dated June 24, 1954, to the then chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to S. 3143, which was a bill introduced in the 83d Congress for the relief of the same aliens, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., June 24, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 3143) for the relief of Dr. Elphidio B. Dosado, Aurelia Dosado, Deanna Dosado, Elpidio Dosado, Jr., and Ambrosio Dosado, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Detroit, Mich., office of this Service, which has custody of those files.

According to the records of this Service, the correct name of the first-named beneficiary is Dr. Elpidio B. Dosado.

The bill would grant the beneficiaries permanent residence in the United States upon payment of the required visa fees. It further provides for the deduction of five numbers from the appropriate immigration quota.

The aliens are chargeable to the quota of the Philippine Islands.

Sincerely,

J. M. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ELPIDIO DOSADO, AURELIA DOSADO, DEANNA DOSADO, ELPIDIO DOSADO, JR., AND AMBROSIO DOSADO, BENEFICIARIES OF H. R. 7420

Elpidio Dosado, his wife, Aurelia Dosado, and their three children, Deanna Dosado, Elpidio Dosado, Jr., and Ambrosio Dosado, natives and citizens of the Philippines, were born on November 16, 1908, October 15, 1909, January 1, 1938, February 6, 1939, and May 11, 1940, respectively. All five entered the United States at the port of San Francisco, Calif., on September 17, 1950. Dr. and Mrs. Dosado were admitted as students for a period of 1 year. The three children were admitted as visitors for a like period. All have received extensions of their temporary admissions.

Dr. Dosado's last extension expired on September 16, 1952. His request for a further extension was denied, and he was notified to depart from the United States on or before February 13, 1953. This departure date was extended to July 15, 1953, with the stipulation that deportation proceedings would be instituted if he failed to depart. On October 13, 1953, deportation proceedings were instituted and the alien was found to be subject to deportation for failure to comply with the conditions of his temporary admission. Voluntary departure has been authorized and the beneficiary has been granted until July 1, 1954, to effect his departure.

Mrs. Dosado's last extension was to expire on September 16, 1953; however, she was found to have accepted employment in the United States contrary to the terms of her temporary admission, and deportation proceedings were instituted against her on April 30, 1953. She, too, was found to be subject to deportation for having failed to comply with the terms of her temporary admission. Voluntary departure, in lieu of deportation, was authorized and she has been granted until July 1, 1954, to effect her departure.

No proceedings have been instituted against the three children pending a final determination of their parents' cases.

The adult male beneficiary was graduated from the College of Medicine, University of the Philippines, Manila, on March 22, 1937. He practiced medicine in Sogod, Cebu, Philippines, from 1937 until December 1940. Early in 1941, he fled with his family to the mountains around Sogod and remained in hiding until April 1945. From April 1945 until August 1950, he practiced medicine in the vicinity of Somar, Philippines. Since coming to the United States, Dr. Dosado has attended a course in basic opthalmology at the Wayne University College of Medicine, Detroit, Mich., from September 1950 until June 1951. He was a resident physician in opthalmology at Woodlawn Hospital, Chicago, Ill., from July 1951 until July 1952, at which time he accepted an internship at St. Margaret's Hospital in Hammond, Ind., where he remained until February 1953. In February 1953 he returned to Detroit, Mich., as a resident physician at Harper Hospital for a year's training in opthalmology. He completed this residency on February 1, 1954.

Dr. Dosado testified that he was enrolled at the Kresge Eye Institute of Wayne University College of Medicine and expected to receive a master's degree in ophthalmology by June 1, 1954. A check with the above institution verified that the beneficiary had completed his residency on February 1, 1954, but failed to indicate that he had enrolled for any further study. Although the beneficiary has testified that he is not presently employed, it appears that he is associated with Dr. George Morrison, 2033 Park Avenue, Detroit, Mich., and has assisted Dr. Morrison in ophthalmology surgery.

The adult female beneficiary graduated from high school in her native country in 1932. She then took 3 years of nurses training at Iloilo Mission Hospital, Iloilo City, Philippines, and 1 year at the University of the Philippines, Manila, which she completed in 1936. She worked for the American Red Cross, Philippine Chapter, Cebu City, from 1936 until 1939. Since coming to the United States, she has taken courses at the Wayne University College of Liberal Arts, Detroit, Mich., and Loyola University School of Nursing, Chicago, Ill. From August 1952 until April 1953, she was employed by the Michael Reese Hospital, Chicago, Ill. Since July 6, 1953, she has been employed by the Martin Place Hospital, Detroit, Mich., and earns approximately $290 per month.

The three children are all students in the Detroit public schools.

Dr. and Mrs. Dosado were married on March 23, 1936, in Manila City, Philippines. They have both testified that they own farmland in their home country and that Dr. Dosado owns a third interest in an electric powerplant in Sogod, from which he derives a monthly income of approximately $1,000. However, only a portion of this income is available to him and the family has no appreciable assets in the United States.

The beneficiaries reside at 79 West Alexanderine, Apartment 501, Detroit, Mich.

Senator Pat McNamara, the author of the bill, has submitted the following letters in connection with the case:

DETROIT, *March 7, 1955.*

Hon. PATRICK MCNAMARA,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I am in receipt of your letter dated March 5, 1955 with reference to the Elpedio Dosado family. I am herewith submitting a résumé of the history of the family and would appreciate your good offices in introducing a bill in their behalf.

The Dosado family entered the United States on September 17, 1950. Dr. Dosado was destined to Wayne University to further his studies in opthalmology. His wife entered Wayne University for further study in nursing. The three children were admitted to the public schools of Detroit. Dr. Dosado has completed his course of study in opthalmology and his wife did not quite complete her course in nursing. The three children are exceptionally fine students and are getting very good marks in school. Dr. Dosado, at the present time, is doing clinical work in opthalmology and has received notification from the Immigration Service that a first preference application, signed in his behalf by the Wayne University doctor, is on file with the American consulate at Windsor, Ontario, Canada. However, I contacted the American consulate at Windsor, Ontario, Canada, and they advised me that a first preference number for the doctor cannot be available for at least 1 year. The Immigration Service at Detroit has been very considerate of the family and of the doctor and they have done everything in their power to extend his stay in the United States in order that he may

further his studies and also be of assistance in the clinic where he is doing this work, without compensation.

I would like to call your attention to the fact that Senator Ferguson had introduced a bill in their behalf prior to his departure from the Senate but due to lack of time, the committee could not reach the bill.

I am asking your further consideration of this matter at this time.

Respectfully yours,

BEN C. SHAPERO.

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN CONSULATE,
Windsor, Ontario, Canada, March 14, 1955.

The Honorable PAT MCNAMARA,
United States Senate, Washington, D. C.

MY DEAR SENATOR MCNAMARA: I wish to acknowledge the expression of your interest in the immigrant visa case of Mr. Elpedio Dosado and family. You ask for a report on this case and advice as to whether or not it is possible for Mr. Dosado to remain in the United States pending his turn for Philippine first preference numbers for himself and his family. You state you have been advised that the Immigration and Naturalization Service, Department of Justice, has told Mr. Dosado that he and his family will be deported shortly.

Mr. Elpedio Dosado and family are registered at this office as intending first preference immigrants chargeable to the quota for the Philippines with a priority date of January 3, 1955, the date on which petition VP 8 16255 was filed on his behalf. The quota for the Philippines is very heavily oversubscribed including the first preference category and indications are that he may have to wait approximately a year before his turn for a quota number is reached.

This consulate cannot express an opinion as to whether or not it will be possible for Mr. Dosado to await his turn for quota numbers while remaining in the United States. You state he has been told that he will be deported shortly. The Immigration and Naturalization Service, Department of Justice, is the competent authority which decides whether or not he may remain in the United States or whether he will be deported.

You may rest assured that this office will notify Mr. Dosado when his turn is reached for a quota number and should he depart from the United States he should call at the nearest American consular post to request the transfer of his file from this consulate.

Very truly yours,

NELSON P. MEEKS, *American Consul.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1933), as amended, should be enacted.

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